(16,123.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 94.

ELIZABETH WETZEL ET AL., APPELLANTS,

vs.

THE MINNESOTA RAILWAY TRANSFER COMPANY ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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1 Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the December term, 1894, of said court, begun and held at the United States court-house, in the city of St. Louis, Missouri, on the first Monday in December, to wit, the third day of December, A. D. 1894, before the Honorable Henry C. Caldwell, Honorable Walter H. Sanborn, and Honorable Amos M. Thayer, circuit judges.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

Attest: JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

Be it remembered that heretofore, to wit, on the twenty-ninth day of June, A. D. 1894, a transcript of record, pursuant to an appeal allowed by the circuit court of the United States for the district of Minnesota, was filed in the clerk's office of the United States circuit court of appeals for the eighth circuit; which said transcript of record is in the words and figures following, to wit:

2 United States Circuit Court, District of Minnesota, Third Division.

ELIZABETH WETZEL, HARRIET A. VAN ZANT, EMMA F. HERGESHEIMER, Maggie L. Beckman, John Wesley Remsen, Mary J. Remsen, George W. Remsen, Clara B. Remsen, and Mabel Remsen, Complainants,

vs.

THE MINNESOTA RAILWAY TRANSFER COMPANY *et al.*, Defendants.

UNITED STATES OF AMERICA, *ss:*

To the Minnesota Railway Transfer Company *et al.* and all of the defendants in the above-entitled suit:

You and each of you are hereby cited and admonished to be and appear at the United States circuit court of appeals for the eighth circuit, at the city of St. Louis in the State of Missouri, sixty (60) days from and after the day this bears date, pursuant to an appeal filed in the clerk's office of the circuit court of the United States, third division, district of Minnesota, wherein Elizabeth Wetzel, Harriet A. Van Zant, Emma F. Hergesheimer, Maggie L. Beckman, John Wesley Remsen, Mary J. Remsen, George W. Remsen, Clara B. Remsen, and Mabel Remsen are appellants and you are respondents, to show cause, if any there be, why the decree entered in said cause on the 6th day of November, A. D. 1893, in which it was ordered, adjudged and decreed among other things that the complainants take nothing by this action, should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable R. R. Nelson, judge of the United States circuit court for the district of Minnesota, this 3d day of May, A. D. 1894.

R. R. NELSON,
Judge of the Circuit Court.

Indorsed: Ent. 610 C. Eq. Original. United States circuit court, district of Minnesota, third division. Elizabeth Wetzel *et al. vs.* The Minnesota Railway Transfer Company *et al.* Citation. Due service of the within citation hereby admitted this 3d day of May, A. D. 1894. Davis, Kellogg & Severance, attorneys for respondents. Filed May 3, 1894. Oscar B. Hillis, clerk. Bramhall & Taylor, attorneys and counsellors, 52 Gilfillan building, St. Paul, Minn.

3 United States Circuit Court, District of Minnesota, Third Division.

ELIZABETH WETZEL, HARRIET A. VAN ZANT, EMMA F. HERGESHEIMER, Maggie L. Beckman, John Wesley Remsen, Mary J. Remsen, George W. Remsen, Clara B. Remsen, and Mabel Remsen, Complainants,

vs.

THE MINNESOTA RAILWAY TRANSFER COMPANY *et al.*, Defendants.

The above-named complainants, Elizabeth Wetzel, Harriet A. Van Zant, Emma F. Hergesheimer, Maggie L. Beckman, John Wesley Remsen, Mary J. Remsen, George W. Remsen, Clara B. Remsen and Mabel Remsen, conceiving themselves aggrieved by the final decree entered in said circuit court in the above-entitled action, on the 6th day of November, A. D. 1893, in and by which it was adjudged, ordered and decreed among other things that complainants take nothing by this action, do hereby appeal from said (decree*d*) to the United States circuit court of appeals for the eighth circuit, and said complainants file herewith an assignment of the errors intended to be urged by them on appeal and refer to said assignment of the errors as a part thereof, and said complainants pray that this their appeal may be allowed, and that a transcript of the record proceedings and evidence in this cause, duly authenticated, may be sent to said United States circuit court of appeals for the eighth circuit.

Dated May 3rd, A. D. 1894.

WILLIAM C. MAYNE,
LUSK, BUNN & HADLEY,
Complainants' Solicitors.
C. W. BUNN, *Of Counsel.*

Indorsed: Petition for allowance of appeal. And now, to wit, on May 3rd, A. D. 1894, it is hereby ordered that the appeal be allowed as prayed herein. R. R. Nelson, United States circuit judge. Filed May 3rd, 1894. Oscar B. Hillis, clerk.

United States Circuit Court, District of Minnesota, Third Division.

ELIZABETH WETZEL, HARRIET A. VAN ZANT, EMMA F. HERGESHEIMER, Maggie L. Beckman, John Wesley Remsen, Mary J. Remsen, George W. Remsen, Clara B. Remsen, and Mabel Remsen, Complainants,

vs.

THE MINNESOTA RAILWAY TRANSFER COMPANY *et al.*, Defendants.

Whereas, lately at the June, 1893, term of the circuit court
4 of the United States in and for the district of Minnesota, third division, in a suit pending in said court between said complainants as complainants, and the said defendants as defendants a decree was rendered against said complainants, in and by which it was ordered, adjudged and decreed, among other things, that said complainants take nothing by this action, and the said complainants having obtained an allowance of the said court of an appeal to reverse the decree in the aforesaid suit, and a citation directed to said defendants and each of them; citing and admonishing them and each of them to appear in the United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, sixty (60) days from and after the date of said citation:

Now, therefore, the American Surety Company of New York for itself, its successors and assigns, does undertake, promises and agrees to and with said defendants, their successors and assigns, and their heirs, executors and administrators, that said complainants shall pay all costs and charges that may be awarded against them on such appeal, not exceeding the sum of fifteen hundred dollars ($15,000).

Now the condition of the above obligation is such that if the said complainants and appellants shall prosecute said appeal to effect and answer all damages and costs if they shall fail to make good their said appeal, then the above obligation to be void, otherwise to remain in full force and virtue.

In witness whereof the American Surety Company of New York has caused these presents to be signed by its resident vice-president and resident assistant secretary at Saint Paul, Minnesota, and its corporate seal to be hereunto affixed on the 2nd day of May, A. D. 1894.

THE AMERICAN SURETY COMPANY OF NEW YORK,
By JOSEPH LOCKEY, *Resident Vice-President.*
A. L. HOPPAUGH, *Resident Assistant Secretary.*

In presence of:

WM. H. FARNHAM.
E. E. SIMMONS.

[CORPORATE SEAL.]

STATE OF MINNESOTA, } ss:
County of Ramsey, }

On this 2 day of May, A. D. 1894, before me personally appeared Joseph Lockey and A. L. Hoppaugh to me personally known,
5 who being duly sworn by me did each on his oath for himself say that he Joseph Lockey is the resident vice-president of the American Surety Company of New York, and he A. L. Hoppaugh is the assistant secretary of said American Surety Company of New York, a corporation; that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors and said Joseph Lockey and A. L. Hoppaugh acknowledged said instrument to be the free act and deed of said corporation.

[NOTARIAL SEAL.] WM. H. FARNHAM,
Notary Public, Ramsey County, Minnesota.

It is hereby stipulated that the foregoing undertaking may be allowed and approved in the above-entitled cause upon the appeal thereof to the United States circuit court of appeals, as and in the place of a bond, and with the same force and effect as if the bond provided for in the rules of said circuit court of appeals, had been given in this action, upon such appeal.

Dated May 3d, 1894.

DAVIS, KELLOGG & SEVERANCE,
Attorneys for Defendants.

The foregoing undertaking with the surety thereon is hereby approved and allowed.

Dated May 3d, 1894. R. R. NELSON,
Circuit Judge.

Indorsed: Appeal undertaking. Filed May 3d, 1894. Oscar B. Hillis, clerk.

United States Circuit Court of Appeals for the Eighth Circuit.

ELIZABETH WETZEL *et al.*, Complainants,
vs.
THE MINNESOTA TRANSFER RAILWAY COMPANY *et al.*, Defendants.

It is hereby stipulated by and between the parties to the above-entitled cause that the complainants upon their appeal from the final decree entered herein in the above-entitled court on November 6, 1893, to the United States circuit court of appeals for the eighth circuit, need not print and file with the clerk of the court for
6 use upon such appeal, only fifteen copies of the record herein, and that the court may make an order to this effect.

Dated May 3rd, A. D. 1894.

BUNN & HADLEY,
WM. C. MAYNE, *Solicitors for Complainants.*
DAVIS, KELLOGG & SEVERANCE,
Defendants' Attorneys.

Upon reading the foregoing stipulation, it is hereby ordered that the complainants, for the purposes of the appeal above mentioned, shall be required to print and file with the clerk of the court for the purpose of such appeal fifteen copies only of the record herein.

Dated May 3d, A. D. 1894.

WALTER H. SANBORN,
Circuit Judge.

Indorsed: Stipulation and order. Filed May 3, 1894. Oscar B. Hillis, clerk.

United States Circuit Court, District of Minnesota, Third Division.

ELIZABETH WETZEL *et al.*, Complainants,
vs.
THE MINNESOTA TRANSFER RAILWAY COMPANY *et al.*, Defendants.

It is hereby stipulated and agreed by and between the parties to the above-entitled cause, that the clerk of the above-entitled circuit court need not send to the appellate court a copy of any of the exhibits or any part thereof, introduced in evidence herein by either the complainants or defendants as a part of the record herein upon the appeal of the complainants herein from the decree of this court entered herein on November 6th, 1893, to the United States circuit court of appeals for the eighth circuit, but in place and in lieu of such copies the said clerk shall certify and send to said appellate court for use on such appeal, said original exhibits and all thereof, for use upon the hearing of said appeal, with the same force and effect as if copies thereof had been certified and returned to such appellate court by the clerk of this court as a part of the record on such appeal.

Dated May 3, 1894.

WM. C. MAYNE,
LUSK, BUNN & HADLEY,
Solicitors for Complainants.
DAVIS, KELLOGG & SEVERANCE,
Solicitors for Defendants.

7 Upon reading the foregoing stipulation,

It is hereby ordered that the clerk of this court may comply with the foregoing stipulation, and the effect of his compliance therewith shall be as herein stipulated.

Dated May 8th, 1894.

WALTER H. SANBORN,
Circuit Judge.

Indorsed: Stipulation and order concerning exhibits. Filed May 12th, 1894. Oscar B. Hillis, clerk.

United States Circuit Court, District of Minnesota, Third Division.

ELIZABETH WETZEL *et al.*, Complainants,
vs.
THE MINNESOTA TRANSFER RAILWAY COMPANY *et als.*, Defendants.

It is hereby stipulated and agreed by and between the parties to the above-entitled cause, that on the appeal taken by the complainants herein to the United States circuit court of appeals for the eighth circuit from the decree of this court entered herein on November 6, 1893, the clerk of this court as a part of the record on such appeal shall return to such appellate court the answer herein of Bridget Egan *et al.*, and none of the other answers interposed herein.

Dated May 10, 1894.

WM. C. MAYNE,
BUNN & HADLEY,
Solicitors for Complainants.
DAVIS, KELLOGG & SEVERANCE,
Solicitors for Defendants.

Indorsed: Stipulation. Filed May 12th, 1894. Oscar B. Hillis, clerk.

8 In the Circuit Court of the United States for the District of Minnesota, Third District. In Equity.

ELIZABETH WETZEL, HARRIET A. VAN ZANT, EMMA F. HERGESHEIMER, Maggie L. Beckman, John Wesley Remsen, Mary J. Remsen, George W. Remsen, Clara B. Remsen, and Mabel Remsen, Complainants,

vs.

THE MINNESOTA TRANSFER RAILWAY COMPANY, MAITLAND E. Graves, Lucia Clark, Florence Lucia Clark, Archie Guthrie Clark, Fred Morse Clark, Louisa E. White, William O. Winston, Fendall G. Winston, Philip B. Winston, David C. Shepard, Peter Siems, Frank P. Shepard, Alvin W. Krech, James F. Jackson, William Deering, Rufus C. Jefferson, Charles F. Backus, L. L. Bennett, George Wilson, Jr., Nels P. Fransen, James L. Lovering, Leonard W. French, Hiram Backus, Lilton E. Shields, William H. Cleary, John A. Cleary, George Strong, Emily R. Fisher, Frank H. McKelvey, Franklin C. Ford, George F. Copeland, Dora Marshall, Clinton Johnson, Leonard J. Dobner, Isabella Z. Kingsley, The Ramsey County Land & Loan Company, Henry S. Fair-
8½ child, Elizabeth Brophy, Edward Howard, Carrie L. Backus, Julia M. Callahan, Lewis H. Lipman, Mary C. Braden, Joseph A. Humphreys, Samuel M. Magoffin, Eleanor Tatum, Amy T. Hilles, Elizabeth T. Long, John Weber, William W. Bixby, Charles L. Walker, William H. Wright, Clarence E. Stone, Frank Crawshaw, Frank Greening, Desire H. Michaud, Josephine A. Huber, Lydia J. Andrew, Herbert M. Crosby, Clin-

ton J. Backus, Amanda E. Johnson, Charles A. Baker, Luther B. Little, George H. Bridgman, John B. Sanborn, Emma E. Chapman, Henry C. V. Hunderup, Benjamin W. Smith, Jed. L. Washburn, Maurice Tracy, Maurice C. Tracy, William H. Fuller, John B. Rossman, Sidney E. Bibbins, Charles E. Lingquist, Charles E. Lindquist, Harcourt Mott, Ola S. Johnson, N. B. Hogg, Jr., E. J. Fargo, John H. Moreland, Willis Danforth, James R. McKay, Kingsley H. Burrell, Caroline M. Burrell, Edith E. Thomas. John Luby, Samuel Strows, Mary C. Thaw, Emily H. Miller, Jennie A. Severn, Thomas W. Martin, Henry Bosse, Kate L. McDermott, John Johnson, Henry C. Babcock, George Lamb, Michael Towey, Charrie A. Morton, Dan. Baker, James C. Hening, Rachel H. Henning, Addie B. Mohler, Robert C. Wiley, Fannie W. Wiley, Tinsley V. Means, Ella B. Clark, Martin Johnson, Andrew G. Johnson, John Aronson, Henry L. Little, Hans Peterson, Owen Williams, Conrad Peters, Levi C. Emery, George R. Barrton, Charles F. Young, Mary Jane Ellison, Agnes A. Hamilton, W. J. O'Toole, M. E. Nelson, Frank A. Ackerman, Cybele B. Flower, Clara W. A. Blackman, Charles W. Heath, Nels Frederickson, Anson B. Baker, Anton Peterson, Robert K. Evans, Richard Evans, Jr., Richard Eavans, Jr., Joseph J. Vilsmeyer, Christian Bendixen, Charles P. Barstow, Mary C. Tatum, The St. Paul Congregational Union of Ramsey County, Minnesota; Marion
9 E. Martin, Mary Brosnahan, Bridget I. O'Leary, Annie M. O'Leary, Bridget Eagan, Mary Eagan, Maria C. Killiam, Thomas Helgesen, The State Bank of Minneapolis, Orin L. Benson, Frank W. Buswell, Lizzie J. Smith, Wallace W. Campbell, George G. Benz, Oliver J. Graham, Freeman J. Page, Erastus H. Murray, Emma G. Lockwood, Michael O'Neill, Sadie E. Martin, Luther B. Little, Thomas G. Harvey, M. P. Ryan, Augusta A. Garrison, James O. Roberts, Jacob A. Roberts, William G. Chapman, John A. Lindquist, Mary A. Crawshaw, William W. Holcomb, Anthony Schimansky, Edward B. Storer, Paul J. Lowell, Elise Hohneck, Lilly M. Brown, Hans Monson, Charles O. Moline, Emil Moline, John Larson, Lewis Larson, Carrie Larson, Annie Larson, Andrew Olson, John August Peterson, John H. Cunningham, Thomas A. Carlson, Klaus J. Larson, Prindle Partridge, Eli S. Montri, Laurits A. Larsen, Christopher Bendixen, William R. Murray, Frederick Bell, Carrie A. Morton, E. I. Hoyt, Mary Little, John Olson, August Olson, Albin Severson, Eleanora Langevin, Mary Eleanora Michaud, Emma Flanagan, Louis A. Langevin, Eugene A. Langevin, and Ida May Langevin, Sole Legatees and Heirs of Edward Langevin, Deceased; Nancy A. Danforth, Delaskie Danforth, Henry W. Danforth, and Charles A. Danforth, the Sole Heirs-at-law of Willis Danforth, Deceased; George Drew, J. E. Wells, and H. H. Goodrich, The St. Paul Trust Company, Mary H. Farquhar, Peter S. Roberts, Wm. H. Willsey, Hannah Austrian, The German-American Building Association, The Lombard Investment Company, Maria W. Curtis, William K. Richardson and Winslow Warren, Trustees under the Will of Henry Richardson, Deceased; William Brewster, Edward Motley, Maria A.

Gilbert, Charles H. Wagner, I. F. Johnson, Gardiner Green,
10 Jr., Executor of the Will of Rachel R. Wheeler, Deceased; W. B. Hopkins, The Savings Bank of St. Paul, J. W. Frederick, Alfred F. Cooley, Oramel A. Richardson, John W. Bookwalter, as James Leffel & Co.; The National Bank of Chambersburg, N. F. Towne, Mary M. Bacon, William B. Martin, John J. Guile, George Griffore, The Rice Street Building Society, Caroline Coleman, Mark W. Fay, Wilhelmina F. Phelps, The Simonds Manufacturing Company, Frank A. Berry, Howard Marston, The Workingmen's Building & Loan Society, The Ramsey County Building Society, Sarah C. Moore, Nora Brown, The Iowa Land Company, Limited; Elmer J. Barker, Martha R. Knauff, Pauline A. Hannaford, Horace E. Stevens, Dwight F. Brooks, Lester R. Brooks, and Anson J. Brooks, Partners as Brooks Brothers; L. G. Kilborn, Eleanor Tatum, Administratrix of the Estate of Samuel C. Tatum, Deceased, and Samuel C. Tatum, Jr., Deceased; Homar C. Potter, The Globe Building Company, F. L. Elwer, L. G. Crandall, C. M. Stone, W. H. Stone, and C. E. Tichener, Partners as Crandall, Stone & Company; William W. Parker, Thomas Tracy and Lawrence Tracy, Partners as Tracy Brothers; William F. Nelson, The Bank of Minneapolis, Andrew Borklund, The J. P. Gribben Lumber Company, C. H. McCormick and L. J. McCormick, Partners as C. H. & L. J. McCormick; William Peterson and Samuel B. Jelke, Partners as William Peterson & Company; Anthony Kelly, Hiram J. Wagner and John I. Black, Partners as Anthony Kelly & Company; William A. Campbell and George R. Lewis, Partners as Campbell & Lewis; Chester G. Higbee, Charles Bergquist, Gilbert E. Holien and Charles B. Blomgren, Partners as Holien & Blomgren; The St. Croix Lumber Company, Ole Oleson, Frederick D. Ford, Frank W. Foreman, Frank B. Foreman and Edward F. Upton, Doing Business as the St. Paul Stained Glass Company; The
11 Bohn Manufacturing Company, B. F. Knauft, Lawrence I. Casserly and James R. Donnelly, Partners as Casserly & Donnelly; John J. Biebighauser, George W. McGuiggan and Neil Kelliher, Partners as McGuiggan & Kelliher; The Chapman-Drake Company, William Salisbury, Abraham Harris and Mark Harris, Partners as Harris Brothers; The Todd Pulley and Shafting Works, Earnest D. Babcock, W. P. Riley, Doing Business as Valley Iron Works; The Allington & Curtis Manufacturing Company, W. C. Armstrong, James J. Armstrong, and Bernard B. Armstrong, Partners as Armstrong Brothers; Isaac B. Davis and John O. Davis, Partners as J. B. Davis & Son; Hanford J. Perkins and Willis J. Perkins, Partners as Perkins & Company; W. B. Dean, J. Ross Nicols, Sarah T. Nicols, Sarah C. Nicols, Emma N. Pilkington, Henry Nicols, and Jessie A. Gregg, Partners as Nicols & Dean; The Canton Steam Pump Company, A. N. Nelson, Treasurer of Ramsey County, Minnesota; W. E. Burton, Treasurer of Ramsey County, Minnesota; F. A. Renz, Treasurer of Ramsey County, Minnesota; J. F. Wilcox, Frank Morand, The Gordon Steam Pump Company, William G. Mulli-

gan, The St. Paul Foundry Company, Dan. Baker, Daniel A. J. Baker, George P. Clark, Levi Houston, F. E. Elmund and Gus Carlson, Partners as Elmund & Carlson; The Woolson Spice Company, Richards Gordon and Paul D. Ferguson, Partners as Gordon & Ferguson; Andrew Schoch, The J. C. Hanley Lime Company, Robert Pearce and Charles P. Price, Partners as Pearce & Company; William Cunningham, Daniel B. Fisk, Daniel M. Fisk, and John E. L. Frasher, Partners as D. B. Fisk & Company; The German-American Hail Insurance Company, Andrew Johnson, James Davenport, Jr., William Poppenberger, F. C. Nelson, The Vulcan Iron Works, F. M. Schutte, Doing
12 Business as Schutte & Company; The Northwestern Fuel Company, Geo. W. Griggs and Emery G. Griggs, Partners as Grigg Brothers; Daniel M. Finlayson, Daniel H. Moon, and Edgar C. Long, Partners as D. M. Finlayson & Company; William Rodger and John D. Roberts, Partners as Rodger & Company; Eugene R. Ide and James R. Thompson, Partners as Ide & Thompson; J. B. Gazett, The St. Paul Trust Company, as Assignee of the Estate of Henry Marine and Peter Zimmer, Partners as Marine & Zimmer; Thomas Jefferson, P. J. Bowlin, Doing Business as P. J. Bowlin & Company; The Cleveland Brown & Company, The H. P. Rugg & Company, James L. Lovering, Henry S. Fairchild, Eleonor Tatum, Hannah Tatum, John B. Rossman, William R. Murray, Charles P. Barstow, Clarence E. Stone, Mary C. Tatum, Amy T. Hilles, and Elizabeth T. Long, Defendants.

To the judges of the circuit court of the United States, sitting in equity:

Your orators, Elizabeth Wetzel, Harriet A. Van Zant, Maggie L. Beckman, Mary J. Remsen, George W. Remsen, Clara B. Remsen, and Mable Remsen, who are citizens of the State of Pennsylvania, residing in that State, Emma F. Hergesheimer, who is a citizen of the State of New Jersey, residing in that State, and John Wesley Remsen, who is a citizen of the State of Maryland, residing in that State, bring this their amended bill of complaint against the said The Minnesota Transfer Railway Company, Maitland E. Graves, Lucia Clark, Florence Lucia Clark, Archie Guthrie Clark, Fred Morse Clark, Louisa E. White, William O. Winston, Fendall G. Winston, Philip B. Winston, David C. Shepard, Peter Siems, Frank P. Shepard, Alvin W. Krech, James F. Jackson, William Deering, Rufus C. Jefferson, Charles F. Backus, L. L. Bennett, George Wilson, Jr., Nels P. Fransen,
13 James L. Lovering, Leonard W. French, Hiram Backus, Lilton E. Shields, William H. Cleary, John A. Cleary, George Strong, Emily R. Fisher, Frank H. McKelvey, Franklin C. Ford, George F. Copeland, Dora Marshall, Clinton Johnson, Leonard J. Dobner, Isabella Z. Kingsley, The Ramsey County Land & Loan Company, Henry S. Fairchild, Elizabeth Brophy, Edward Howard, Carrie L. Backus, Julia M. Callahan, Lewis H. Lipman, Mary C. Braden, Joseph A. Humphreys, Samuel M. Magoffin, Eleanor Tatum,

Amy T. Hilles, Elizabeth T. Long, John Weber, William W. Bixby, Charles L. Walker, William H. Wright, Clarence E. Stone, Frank Crawshaw, Frank Greening, Desire H. Michaud, Josephine A. Huber, Lydia J. Andrew, Herbert M. Crosby, Clinton J. Backus, Amanda E. Johnson, Charles A. Baker, Luther B. Little, George H. Bridgman, John B. Sanborn, Emma E. Chapman, Henry C. V. Hunderup, Benjamin W. Smith, Jed. L. Washburn, Maurice Tracy, Maurice C. Tracy, William H. Fuller, John B. Rossman, Sidney E. Bibbins, Charles E. Lingquist, Charles E. Lindquist, Harcourt Mott, Ola S. Johnson, N. B. Hogg, Jr., E. J. Fargo, John H. Moreland, Willis Danforth, James R. McKay, Kingsley H. Burrell, Caroline M. Burrell, Edith E. Thomas, John Luby, Samuel Strows, Mary C. Thaw, Emily H. Miller, Jennie A. Severn, Thomas W. Martin, Henry Bosse, Kate L. McDermott, John Johnson, Henry C. Babcock, George Lamb, Michael Towie, Charrie A. Morton, Dan. Baker, James C. Hening, Rachel H. Henning, Addie B. Mohler, Robert C. Wiley, Fannie W. Wiley, Tinsley V. Means, Ella B. Clark, Martin Johnson, Andrew G. Johnson, John Aronson, Henry L. Little, Hans Peterson, Owen Williams, Conrad Peters, Levi C. Emery, George R. Bartron, Charles F. Young, Mary Jane Ellison, Agnes A. Hamilton, W. J.
14 O'Toole, M. E. Nelson, Frank A. Ackerman, Cybele B. Flower, Clara W. A. Blackman, Charles W. Heath, Nels Frederickson, Anson B. Baker, Anton Peterson, Robert K. Evans, Richard Evans, Jr., Richard Eavans, Jr., Joseph J. Vilsmeyer, Christian Bendixen, Charles P. Barstow, Mary C. Tatum, The St. Paul Congregational Union of Ramsey County, Minnesota, Marion E. Martin, Mary Brosnahan, Bridget I. O'Leary, Annie M. O'Leary, Bridget Eagan, Mary Eagan, Maria C. Killiam, Thomas Helgesen, The State Bank of Minneapolis, Orin L. Benson, Frank W. Buswell, Lizzie J. Smith, Wallace W. Campbell, George G. Benz, Oliver J. Graham, Freeman J. Page, Erastus H. Murray, Emma G. Lockwood, Michael O'Neill, Sadie E. Martin, Luther B. Little, Thomas G. Harvey, M. P. Ryan, Augusta A. Garrison, James O. Roberts, Jacob A. Roberts, William G. Chapman, John A. Lindquist, Mary A. Crawshaw, William W. Holcomb, Anthony Schimansky, Edward B. Storer, Paul J. Lowell, Elise Hohneck, Lily M. Brown, Hans Monson, Charles O. Moline, Emil Moline, John Larson, Lewis Larson, Carrie Larson, Annie Larson, Andrew Olson, John August Peterson, John H. Cunningham, Thomas A. Carlson, Klaus J. Larson, Prindle Partridge, Eli S. Montri, Laurits A. Larsen, Christopher Bendixen, William R. Murray, Frederick Bell, Carrie A. Morton, E. I. Hoyt, Mary Little, John Olson, August Olson, Albin Severson, Eleanora Langevin, Mary Eleanora Michaud, Emma Flanagan, Louis A. Langevin, Eugene A. Langevin and Ida May Langevin, sole legatees and heirs of Edward Langevin, deceased, Nancy A. Danforth, Delaskie Danforth, Henry W. Danforth and Charles A. Danforth, the sole heirs-at-law of Willis Danforth, deceased, George Drew, J. E. Wells, and H. H. Goodrich, The St. Paul Trust Company, Mary H. Farquhar, Peter S. Roberts, Wm. H. Willsey, Hannah Austrian,
15 The German-American Building Association, The Lombard Investment Company, Maria W. Curtis, William K. Richard-

son and Winslow Warren, trustees under the will of Henry Richardson, deceased, William Brewster, Edward Motley, Maria A. Gilbert, Charles H. Wagner, I. F. Johnson, Gardiner Green, Jr., executor of the will of Rachel R. Wheeler, deceased, W. B. Hopkins, The Savings Bank of St. Paul, J. W. Frederick, Alfred F. Cooley, Oramel A. Richardson, John W. Bookwalter, as James Leffel & Co., The National Bank of Chambersburg, N. F. Towne, Mary M. Bacon, William B. Martin, John J. Guile, George Griffore, The Rice Street Building Society, Caroline Coleman, Mark W. Fay, Wilhelmina F. Phelps, The Simonds Manufacturing Company, Frank A. Berry, Howard Marston, The Workingmen's Building & Loan Society, The Ramsey County Building Society, Sarah C. Moore, Nora Brown, The Iowa Land Company, Limited, Elmer J. Barker, Martha R. Knauff, Pauline A. Hannaford, Horace E. Stevens, Dwight F. Brooks, Lester R. Brooks, and Anson J. Brooks, partners as Brooks Brothers, L. G. Kilborn, Eleanor Tatum, administratrix of the estate of Samuel C. Tatum, deceased, and Samuel C. Tatum, Jr., deceased, Homar C. Potter, The Globe Building Company, F. L. Elwer, L. G. Crandall, C. M. Stone, W. H. Stone and C. E. Tichener, partners as Crandall, Stone & Company, William W. Parker, Thomas Tracy and Lawrence Tracy, partners as Tracy Brothers, William F. Nelson, The Bank of Minneapolis, Andrew Borklund, The J. P. Gribben Lumber Company, C. H. McCormick and L. J. McCormick, partners as C. H. & L. J. McCormick; William Peterson and Samuel B. Jelke, partners as William Peterson & Company, Anthony Kelly, Hiram J. Wagner and John I. Black, partners as Anthony Kelly & Company, William A. Campbell and George R. Lewis,
16 partners as Campbell & Lewis, Chester G. Higbee, Charles Bergquist, Gilbert E. Holien and Charles B. Blomgren, partners as Holien & Blomgren, The St. Croix Lumber Company, Ole Oleson, Frederick D. Ford, Frank W. Foreman, Frank B. Foreman and Edward F. Upton, doing business as the St. Paul Stained Glass Company, The Bohn Manufacturing Company, B. F. Knauft, Lawrence I. Casserly and James R. Donnelly, partners as Casserly & Donnelly, John J. Biebighauser, George W. McGuiggan and Neil Kelliher, partners as McGuiggan & Kelliher, The Chapman-Drake Company, William Salisbury, Abraham Harris and Mark Harris, partners as Harris Brothers, The Todd Pulley and Shafting Works, Earnest D. Babcock, W. P. Riley, doing business as Valley iron works, The Allington & Curtis Manufacturing Company, W. C. Armstrong, James J. Armstrong and Bernard B. Armstrong, partners as Armstrong Brothers, Isaac B. Davis and John O. Davis, partners as J. B. Davis & Son, Hanford J. Perkins and Willis J. Perkins, partners as Perkins & Company, W. B. Dean, J. Ross Nicols, Sarah T. Nicols, Sarah C. Nicols, Emma N. Pilkington, Henry Nicols and Jessie A. Gregg, partners as Nicols & Dean, The Canton Steam Pump Company, A. N. Nelson, treasurer of Ramsey county, Minnesota, W. E. Burton, treasurer of Ramsey county, Minnesota, F. A. Renz, treasurer of Ramsey county, Minnesota, J. F. Wilcox, Frank Morand, The Gordon Steam Pump Company, William G. Mulligan, The St. Paul Foundry Company, Dan. Baker,

Daniel A. J. Baker, George P. Clark, Levi Houston, F. E. Elmund and Gus Carlson, partners as Elmund & Carlson, The Woolson Spice Company, Richards Gordon, and Paul D. Ferguson, partners as Gordon & Ferguson, Andrew Schock, The J. C. Hanley Lime Company, Robert Pearce, and Charles P. Price,
17 partners as Pearce & Company, William Cunningham, Daniel B. Fisk, Daniel M. Fisk and John E. L. Frasher, partners as D. B. Fisk & Company, The German-American Hail Insurance Company, Andrew Johnson, James Davenport, Jr., William Poppenberger, F. C. Nelson, The Vulcan Iron Works, F. M. Schutte, doing business as Schutte & Company, The Northwestern Fuel Company, Geo. W. Griggs and Emery G. Griggs, partners as Griggs Brothers, Daniel M. Finlayson, Daniel H. Moon and Edgar C. Long, partners as D. M. Finlayson & Company, William Rodger and John D. Roberts, partners as Rodger & Company, Eugene R. Ide and James R. Thompson, partners as Ide & Thompson, J. B. Gazett, The St. Paul Trust Company as assignee of the estate of Henry Marine and Peter Zimmer, partners as Marine & Zimmer, Thomas Jefferson, P. J. Bowlin, doing business as P. J. Bowlin & Company, The Cleveland Brown & Company, The H. P. Rugg & Company, James L. Lovering, Henry S. Fairchild, Eleonor Tatum, Hannah Tatum, John B. Rossman, William R. Murray, Charles P. Barstow, Clarence E. Stone, Mary C. Tatum, Amy T. Hilles and Elizabeth T. Long, who are citizens of the State of Minnesota, and reside in said State, and thereupon your orators state—

That The Minnesota Transfer Railway Company, The St. Paul Trust Company, The Great Northern Railway Company, The German-American Building Association, The Lombard Investment Company, The Ramsey County Land and Loan Company, The St. Paul Congregational Union of Ramsey County, Minnesota, The State Bank of Minneapolis, The National Bank of Chambersburg, The Rice Street Building Society, The Simonds Manufacturing Company, The Savings Bank of St. Paul, The Workingmen's
18 Building and Loan Society, The Ramsey County Building Society, The Iowa Land Company, Limited, The Globe Building Company, The J. P. Gribben Lumber Company, The Bohn Manufacturing Company, The Chapman-Drake Company, The Todd Pulley and Shafting Works, The Allington & Curtice Manufacturing Company, The Canton Steam Pump Company, The Gordon Steam Pump Company, The St. Paul Foundry Company, The Woolsen Spice Company, The J. C. Hanley Lime Company, The German-American Hail Insurance Company, The Vulcan Iron Works, The Northwestern Fuel Company, The Cleveland, Brown & Company, The H. P. Rugg & Company, The Bank of Minneapolis and The St. Croix Lumber Company are corporations organized and existing under and by virtue of the laws of the State of Minnesota, with their principal office and place of business in said State.

That Eleanor Tatum is administratrix of the estate of Samuel C. Tatum, deceased, and also of the estate of Samuel C. Tatum, Jr., deceased.

That Eleanor Langevin, Mary Eleanor Michaud, Emma Flanna-

gan, Louis A. Langevin, Eugene A. Langevin and Ida May Langevin are the sole heirs and legatees of Edward Langevin, deceased.

That William K. Richardson and Winslow Warren are the trustees of and under the will of Henry L. Richardson, deceased, and that Gardiner Green, Jr., is the executor of and under the will of Rachael R. Wheeler, deceased.

That the St. Paul Trust Company is the assignee of the estate of Henry Marine and Peter Zimmer, partners as Marine & Zimmer.

That L. G. Crandall, C. M. Stone, W. H. Stone and C. E. Tichener are partners doing business under the name of Crandall, Stone & Company.

That Thomas Tracy and Lawrence Tracy are partners doing business under the firm name of Tracy Brothers.

19 That C. H. McCormick and L. J. McCormick are partners doing business under the firm name of C. H. and L. J. McCormick.

That William Peterson and Samuel B. Jelke are partners doing business under the firm name of William Peterson & Co.

That Anthony Kelly, Hiram J. Wagner and John I. Black are partners doing business under the firm name of Anthony Kelly & Co.

That William A. Campbell and George R. Lewis are partners doing business under the firm name of Campbell & Lewis.

That Gilbert E. Holien and Charles B. Blomgren are partners doing business under the firm name of Holien & Blomgren.

That Frederick D. Ford, Frank W. Foreman, Frank B. Foreman and Edward F. Upton are partners doing business under the firm name of the St. Paul Stained Glass Company.

That Lawrence I. Casserly and James R. Donnelly are partners doing business under the firm name of Casserly & Donnelly.

That George W. McGuiggan and Neil Kelliher are partners doing business under the firm name of McGuiggan & Kelliher.

That Abraham Harris and Mark Harris are partners doing business under the firm name of Harris Brothers.

That W. C. Armstrong, James J. Armstrong and Bernard B. Armstrong are partners doing business under the firm name of Armstrong Brothers.

That Isaac B. Davis and John O. Davis are partners doing business under the firm name of J. B. Davis & Son.

That Hanford J. Perkins and Willis J. Perkins are partners doing business under the firm name of Perkins & Company.

That W. B. Dean, J. Ross Nicols, Sarah T. Nicols, Sarah

20 C. Nicols, Emma N. Pilkington, Henry Nicols and Jessie A. Gregg are partners doing business under the firm name of Nicols & Dean.

That F. E. Elmund and Gus Carlson are partners doing business under the firm name of Elmund & Carlson.

That Richards Gordon and Paul D. Ferguson are partners doing business under the firm name of Gordon & Ferguson.

That Robert Pearce and Charles P. Price are partners doing business under the firm name of Pearce & Company.

That Daniel B. Fisk, Daniel M. Fisk and John E. L. Frasher are partners doing business as D. B. Fisk & Company.

That George W. Griggs and Emery G. Griggs are partners doing business as Griggs Brothers.

That Daniel M. Finlayson, Daniel H. Moon and Edgar C. Long are partners doing business as D. M. Finlayson & Company.

That William Rodger and John D. Roberts are partners doing business as Rodger and Company.

That Eugene R. Ide and James R. Thompson are partners doing business under the firm name of Ide & Thompson.

That Nancy A. Danforth, Delaskie Danforth, Henry W. Danforth and Charles A. Danforth are the sole heirs-at-law of Willis Danforth, deceased.

That one George W. Remsen became in his lifetime duly entitled to a land warrant for enlistment and services in the United States Army under the terms of the act of Congress approved on the 11th day of February, 1847, and being so entitled to said land warrant, the said George W. Remsen died. That after his death, and on the 30th day of February, 1848, the United States Government duly issued its land warrant No. 28811 for one hundred and sixty (160) acres of land in the name of Elizabeth Remsen, widow, Harriet A. Remsen, Mary Ann Remsen, John Wesley Remsen, Elizabeth
21 Remsen and George W. A. Remsen, children and heirs-at-law of the said George W. Remson, deceased, which warrant entitled them, pursuant to the provisions of the 9th section of said act of Congress approved on the 11th day of February, 1847, to locate said warrant on any quarter section of Government land subject to private entry under the regulations and restrictions established by the Commissioner of the General Land Office. That when said warrant was issued and when the same was assigned and transferred as hereinafter stated, said Elizabeth Remsen was the widow, and Harriet A. Remsen, Mary Ann Remsen, John Wesley Remsen, Elizabeth Remsen and George W. A. Remsen were children, and the only heirs-at-law of the said George W. Remsen, deceased, and all minors under the age of fourteen except said Harriet A., who was seventeen.

That on or about the 6th day of October, 1848, the said Elizabeth Remsen, widow, was duly appointed the guardian of the persons and estates of said Mary Ann Remsen, John Wesley Remsen, Elizabeth Remsen and George W. A. Remsen, minor children of George W. Remsen, deceased, by the orphans' court of the city and county of Philadelphia, which had jurisdiction to appoint said guardian. And that on the 11th day of October, 1848, at Philadelphia, in the State of Pennsylvania, the said Elizabeth Remsen, purporting to act for herself and also as guardian for said minor children, joined with the said Harriet A. Remsen, and together they attempted to assign the said military land warrant by a written instrument executed and delivered on that day to one Nathan C. D. Taylor. Said assignment was in the words following, that is to say:

"For value received, we, Elizabeth Remsen, widow, for myself

and as guardian of the persons and estates of Mary Ann Remsen, John Wesley Remsen, Elizabeth Remsen and George W. A. Remsen, minor children of George W. Remsen, deceased, duly ap-
22 pointed by the orphans' court of the city and county of Philadelphia; and Harriet A. Remsen, do hereby sell and assign unto Nathan C. D. Taylor all our right and title, and all the right and title of the said minor children, to the within certificate or warrant No. 28811 for one hundred and sixty acres.

Witness *my* hands this eleventh day of October, 1848, at Philadelphia, in the State of Pennsylvania.

her
ELIZABETH x REMSEN,
mark.
For Myself and as Guardian of the Minor Children of George W. Remsen, Deceased.
HARRIET A. REMSEN.

Attest:
ISAAC BOILEAU.
WM. F. SMALL.

Acknowledged before me this eleventh day of October, 1848, at Philadelphia, in the State of Pennsylvania.

ISAAC BOILEAU,
Alderman and Justice of the Peace."

That said sale and assignment of said land warrant was, as your orators are advised and verily believe, wholly void and of no effect, because as your orators say, the said orphans' court before mentioned, which was the court having jurisdiction, never made any order or decree, or took any other proceedings, authorizing the said guardian to sell, transfer or assign the interest of said minors in said land warrant; and your orators further say that by the law of Pennsylvania, as well as by the law of the United States, to wit, the said act of 1847 before mentioned, the said guardian had no right or authority without the order or decree of said orphans' court to sell, transfer or assign the said interest of said minor children.

And moreover, the said widow Elizabeth was by the law of Pennsylvania entitled only to a common-law dower interest in said real estate, which could not be sold or assigned before admeasurement. And the said Harriet A. Remsen was a minor of the age of only seventeen years, and was married at the time to one
23 Jacob Heyer. By the law of Pennsylvania her conveyance was void without her husband's signature. That she did not know what said instrument was when she signed the same, was totally ignorant that she had any interest in said warrant or any lands, or that her father was or ever had been entitled to said warrant or said lands. She signed the paper in such ignorance and at request of her said mother, who represented that the signature was to a receipt and of a formal character. That she never received any consideration for her said alleged conveyance, and remained until within eight months past in total ignorance as to the matters herein alleged, as more fully stated hereafter.

That the said Nathan C. D. Taylor, as the assignee of said land warrant, located the said warrant on the southwest quarter (S. W. ¼) of section twenty-eight (28) in township twenty-nine (29) north, of range twenty-three (23) west, in the district of lands subject to sale at Stillwater in the Territory of Minnesota, which lands are now situated in the county of Ramsey in said State, and were at the time of said location Government lands subject to be appropriated by the location thereon of said land warrant. That the said land warrant was located as aforesaid on or about the 20th day of March, in the year 1850, and thereafter the Government of the United States issued its patent bearing date the said 20th day of March, 1850, which patent was in the words and figures following, that is to say:

"C" 288.

"The United States of America to all — whom these presents shall come, Greeting:

Know ye, that in pursuance of an act of Congress entitled 'An act to raise for a limited time an additional military force and for other purposes,' approved February 11th, 1847, Elizabeth Remsen, widow
Harriet A. Remsen, Mary Ann Remsen, John W. Remsen,
24 Elizabeth Remsen and George W. A. Remsen, children, heirs-at-law of George W. Remsen, deceased, late a private Company H, Third regiment United States infantry, having deposited in the General Land Office a warrant in their favor numbered 28811: there is therefore granted by the United States unto Nathan C. D. Taylor, assignee of said Elizabeth Remsen in her own right, and as guardian of the aforesaid minor heirs, and to his heirs, the southwest quarter of section twenty-eight in township twenty-nine north, of range twenty-three west, in the district of lands subject to sale at Stillwater, Territory of Minnesota, containing one hundred and sixty acres, according to the official plat of the survey of the said land returned to the General Land Office by the surveyor general, which said tract has been located in satisfaction of the aforementioned warrant in pursuance of the act of Congress above mentioned approved February 11th, 1847. To have and to hold the said quarter section of land with the appurtenances thereof unto the said Nathan C. D. Taylor, and to his heirs and assigns, forever.

In testimony whereof, I, Zachery Taylor, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington on the twentieth day of March in the year of our Lord one thousand eight hundred and fifty, and of the Independence of the United States the seventy-fourth.

By the President:

[PROBATE COURT SEAL.] Z. TAYLOR,
By THOS. EWING, JR., *Secretary.*
N. SARGENT,
Recorder of the General Land Office."

Recorded vol. 17, page 385.

That thereafter the said Nathan C. D. Taylor caused said patent to be recorded in the office of the register of deeds of the county of Ramsey, in vol. "C" Deeds, page 288.

That the said Nathan C. D. Taylor afterwards executed divers and sundry conveyances of the said lands, or of different parts and parcel thereof, by which he conveyed the said lands, or all his right, title and interest in the same, unto sundry and divers persons, so that by said conveyances, or by a chain of conveyances originating as aforesaid in said Taylor, all the right, title and interest of said Taylor under said patent as to portions of said premises have passed to and are now owned by the said defendants, The Minnesota Transfer Railway Company, Maitland E. Graves, Lucia Clark, Florence Lucia Clark, Archie Guthrie Clark, Fred Morse Clark, Louisa E. White, William O. Winston, Fendall G. Winston, Philip B. Winston, David C. Shepard, Peter Siems, Frank P. Shepard, Alvin W. Krech, James F. Jackson, William Deering, Rufus C. Jefferson, Charles F. Backus, L. L. Bennett, George Wilson, Jr., Nels P. Fransen, James L. Lovering, Leonard W. French, Hiram Backus, Lilton E. Shields, William H. Cleary, John A. Cleary, George Strong, Emily R. Fisher, Frank H. McKelvey, Franklin C. Ford, George F. Copeland, Dora Marshall, Clinton Johnson, Leonard J. Dobner, Isabella Z. Kingsley, The Ramsey County Land & Loan Company, Henry S. Fairchild, Elizabeth Brophy, Edward Howard, Carrie L. Backus, Julia M. Callahan, Lewis H. Lipman, Mary C. Braden, Joseph A. Humphreys, Samuel M. Magoffin, Eleanor Tatum, Amy T. Hilles, Elizabeth T. Long, John Weber, William W. Bixby, Charles L. Walker, William H. Wright, Clarence E. Stone, Frank Crawshaw, Frank Greening, Desire H. Michaud, Josephine A. Huber, Lydia J. Andrew, Herbert M. Crosby, Clinton J. Backus, Amanda E. Johnson, Charles A. Baker, Luther B. Little, George H. Bridgman, John B. Sanborn, Emma E. Chapman, Henry C. V. Hunderup, Benjamin W. Smith, Jed. L. Washburn, Maurice Tracy, Maurice C. Tracy, William H. Fuller, John B. Rossman, Sidney E. Bibbins, Charles E. Lingquist, Charles E. Lindquist, Harcourt Mott, Ola S. Johnson, N. B. Hogg, Jr., E. J. Fargo, John H. Moreland, Willis Danforth, James R. McKay, Kingsley H. Burrell, Caroline M. Burrell, Edith E. Thomas, John Luby, Samuel Strows, Mary C. Thaw, Emily H. Miller, Jennie A. Severn, Thomas W. Martin, Henry Bosse, Kate L. McDermott, John Johnson, Henry C. Babcock, George Lamb, Michael Towey, Charrie A. Morton, Dan. Baker, James C. Hening, Rachel H. Henning, Addie B. Mohler, Robert C. Wiley, Fannie W. Wiley, Tinsley V. Means, Ella B. Clark, Martin Johnson, Andrew G. Johnson, John Aronson, Henry L. Little, Hans Peterson, Owen Williams, Conrad Peters, Levi C. Emery, George R. Bartron, Charles F. Young, Mary Jane Ellison, Agnes A. Hamilton, W. J. O'Toole, M. E. Nelson, Frank A. Ackerman, Cybele B. Flower, Clara W. A. Blackman, Charles W. Heath, Nels Frederickson, Anson B. Baker, Anton Peterson, Robert K. Evans, Richard Evans, Jr., Richard Eavans, Jr., Joseph J. Vilsmeyer, Christian Bendixen, Charles P. Barstow, Mary C. Tatum, The St. Paul Congregational Union of Ramsey County, Minnesota, Marion E. Martin, Mary

Brosnahan, Bridget I. O'Leary, Annie M. O'Leary, Bridget Eagan, Mary Eagan, Maria C. Killiam, Thomas Helgesen, The State Bank of Minneapolis, Orin L. Benson, Frank W. Buswell, Lizzie J. Smith, Wallace W. Campbell, George G. Benz,

27 Oliver J. Graham, Freeman J. Page, Erastus H. Murray, Emma G. Lockwood, Michael O'Neill, Sadie E. Martin, Luther B. Little, Thomas G. Harvey, M. P. Ryan, Augusta A. Garrison, James O. Roberts, Jacob A. Roberts, William G. Chapman, John A. Lindquist, Mary A. Crawshaw, William W. Holcomb, Anthony Schimansky, Edward B. Storer, Paul J. Lowell, Elise Hohneck, Lily M. Brown, Hans Monson, Charles O. Moline, Emil Moline, John Larson, Lewis Larson, Carrie Larson, Annie Larson, Andrew Olson, John August Peterson, John H. Cunningham, Thomas A. Carlson, Klaus J. Larson, Prindle Partridge, Eli S. Montri, Laurits A. Larsen, Christopher Bendixen, William R. Murray, Frederick Bell, Carrie A. Morton, E. I. Hoyt, Mary Little, John Olson, August Olson, Albin Severson, Eleanora Langevin, Mary Eleanora Michaud, Emma Flanagan, Louis A. Langevin, Eugene A. Langevin and Ida May Langevin, sole legatees and heirs of Edward Langevin, deceased, Nancy A. Danforth, Delaskie Danforth, Henry W. Danforth and Charles A. Danforth, the sole heirs-at-law of Willis Danforth, deceased, George Drew, J. E. Wells, and H. H. Goodrich, who now claim to be the sole and absolute owners of portions of the said premises, which your orators are not able to describe or specify with more particularity. Your orators have no more exact and particular knowledge concerning the said conveyances from the said Taylor or mesne conveyances between him and the said defendants, and are therefore unable to state the said conveyances with more particularity. But your orators allege that each and every of the said defendants claim title to the said lands or some part thereof under a conveyance from said Taylor or a chain of conveyances originating with him, after the record of said patent in the office of the register of deeds as before set forth.

28 That the said other defendants, to wit: The St. Paul Trust Company, Mary H. Farquhar, Peter S. Roberts, Wm. H. Willsey, Hannah Austrian, The German-American Building Association, The Lombard Investment Company, Maria W. Curtis, William K. Richardson and Winslow Warren, trustees under the will of Henry Richardson, deceased, William Brewster, Edward Motley, Maria A. Gilbert, Charles H. Wagner, I. F. Johnson, Gardiner Green, Jr., executor of the will of Rachel R. Wheeler, deceased, W. B. Hopkins, The Savings Bank of St. Paul, J. W. Frederick, Alfred F. Cooley, Oramel A. Richardson, John W. Bookwalter, as James Leffel & Co., The National Bank of Chambersburg, N. F. Towne, Mary M. Bacon, William B. Martin, John J. Guile, George Griffore, The Rice Street Building Society, Caroline Coleman, Mark W. Fay, Wilhelmina F. Phelps, The Simonds Manufacturing Company, Frank A. Berry, Howard Marston, The Workingmen's Building & Loan Society, The Ramsey County Building Society, Sarah C. Moore, Nora Brown, The Iowa Land Company, Limited, Elmer J. Barker, Martha R. Knauff, Pauline A. Hannaford, Horace E. Stevens, Dwight F. Brooks, Lester

R. Brooks, and Anson J. Brooks, partners as Brooks Brothers, L. G. Kilborn, Eleanor Tatum, administratrix of the estate of Samuel C. Tatum, deceased, and Samuel C. Tatum, Jr., deceased, Homar C. Potter, The Globe Building Company, F. L. Elwer, L. G. Crandall, C. M. Stone, W. H. Stone and C. E. Tichener, partners as Crandall, Stone & Company, William W. Parker, Thomas Tracy and Lawrence Tracy, partners as Tracy Brothers, William F. Nelson, The Bank of Minneapolis, Andrew Borklund, The J. P. Gribben Lumber Company, C. H. McCormick and L. J. McCormick, partners as C. H. & L. J. McCormick, William Peterson and Samuel B. Jelke,
29 partners as William Peterson & Company, Anthony Kelly, Hiram J. Wagner and John I. Black, partners as Anthony Kelly & Company, William A. Campbell and George R. Lewis, partners as Campbell & Lewis, Chester G. Higbee, Charles Bergquist, Gilbert E. Holien and Charles B. Blomgren, partners as Holien & Blomgren, The St. Croix Lumber Company, Ole Oleson, Frederick D. Ford, Frank W. Foreman, Frank B. Foreman and Edward F. Upton, doing business as the St. Paul Stained Glass Company, The Bohn Manufacturing Company, B. F. Knauft, Lawrence I. Casserly and James R. Donnelly, partners as Casserly & Donnelly, John J. Biebighauser, George W. McGuiggan and Neil Kelliher, partners as McGuiggan & Kelliher, The Chapman-Drake Company, William Salisbury, Abraham Harris and Mark Harris, partners as Harris Brothers, The Todd Pulley and Shafting Works, Earnest D. Babcock, W. P. Riley, doing business as Valley iron works, The Allington & Curtis Manufacturing Company, W. C. Armstrong, James J. Armstrong and Bernard B. Armstrong, partners as Armstrong Brothers, Isaac B. Davis and John O. Davis, partners as J. B. Davis & Son, Hanford J. Perkins and Willis J. Perkins, partners as Perkins & Company, W. B. Dean, J. Ross Nicols, Sarah T. Nicols, Sarah C. Nicols, Emma N. Pilkington, Henry Nicols and Jessie A. Gregg, partners as Nicols & Dean, The Canton Steam Pump Company, A. N. Nelson, treasurer of Ramsey county, Minnesota, W. E. Burton, treasurer of Ramsey county, Minnesota, F. A. Renz, treasurer of Ramsey county, Minnesota, J. F. Wilcox, Frank Morand, The Gordon Steam Pump Company, William G. Mulligan, The St. Paul Foundry Company, Dan. Baker, Daniel A. J. Baker, George P. Clark, Levi Houston, F. E. Elmund and Gus Carlson, partners as Elmund & Carlson, The Wool-
30 son Spice Company, Richards Gordon and Paul D. Ferguson, partners as Gordon & Ferguson, Andrew Schoch, The J. C. Hanley Lime Company, Robert Pearce, and Charles P. Price, partners as Pearce & Company, William Cunningham, Daniel B. Fisk, Daniel M. Fisk and John E. L. Frasher, partners as D. B. Fisk & Company, The German-American Hail Insurance Company, Andrew Johnson, James Davenport, Jr., William Poppenberger, F. C. Nelson, The Vulcan Iron Works, F. M. Schutte, doing business as Schutte & Company, The Northwestern Fuel Company, Geo. W. Griggs and Emery G. Griggs, partners as Griggs Brothers, Daniel M. Finlayson, Daniel H. Moon and Edgar C. Long, partners as D. M. Finlayson & Company, William Rodger and John D

Roberts, partners as Rodger & Company, Eugene R. Ide and James R. Thompson, partners as Ide & Thompson, J. B. Gazett, The St. Paul Trust Company as assignee of the estate of Henry Marine and Peter Zimmer, partners as Marine & Zimmer, Thomas Jefferson, P. J. Bowlin, doing business as P. J. Bowlin & Company, The Cleveland Brown & Company, The H. P. Rugg & Company, James L. Lovering, Henry S. Fairchild, Eleonor Tatum, Hannah Tatum, John B. Rossman, William R. Murray, Charles P. Barstow, Clarence E. Stone, Mary C. Tatum, Amy T Hilles and Elizabeth T. Long, have or claim to have judgments or other liens against said premises, and all of them claim under, through or against the said defendants first above named, and all of their alleged liens, claims and demands are subject and subordinate to the title of your orators. And your orators allege that each and every of the defendants has acquired his title and rights with full notice and knowledge of all the recitals in said patent and all the terms thereof, and of all the facts hereinbefore stated.

31 That your orator Elizabeth Wetzel is the Elizabeth Remsen, widow of George W. Remsen before mentioned. Your orator Harriet A. Van Zant is the said Harriet A. Remsen. That said Mary Ann Remsen was born on August 12, 1835, and died June 12, 1882, leaving surviving her children and sole heirs-at-law your orators Emma F. Hergesheimer and Maggie L. Beckman. Your orator John Wesley Remsen is one of the before-mentioned minor children of said George W., and was born on the 8th day of November, 1837. The said Elizabeth W. Remsen was born on the 22d day of February, 1840, and died on the 11th day of October, 1862, unmarried and without issue, and her interest then descended to your orators as provided by the statutes of Minnesota. Said George W. A. Remsen was born on the 18th day of September, 1842, and died in 1878, leaving your orators Mary J. Remsen his widow, George W. Remsen, Clara B. Remsen and Mable Remsen his children, said widow and children being his sole heirs-at-law.

That neither your orators nor their predecessors in interest (except the said Elizabeth Wetzel), at the time of the alleged assignment of said land warrant or at any time thereafter, knew of the said sale, and they remained in absolute ignorance thereof and also in absolute ignorance of any such land warrant or any land warrant whatever having been issued to them or to their father or their guardian, and also in absolute ignorance that their father ever became entitled to any such land warrant or any land warrant whatever; that not until August in the year 1891 did your orators or any of their predecessors in interest (except said Elizabeth Wetzel) acquire any knowledge or information whatever of any of the facts in this bill set forth. That in August, 1891, they acquired information of the facts herein stated in the following manner: Letters had been

32 before received by them from parties in the city of St. Paul, State of Minnesota, representing the defendants or some of them, requesting your orators or some of them, to execute quitclaim deeds of certain interests which they were supposed to have or to have had in lands in the State of Minnesota. The deeds so requested

being for all their interest in lands anywhere within said State, and the said parties declining to describe the particular land intended to be conveyed. That when said letters were received, each and every of your orators, except said Elizabeth Wetzel, were totally ignorant of ever having had any interest in any lands in the State of Minnesota, but on the receipt of said letters they consulted counsel, who caused an investigation to be made of the records of the Land Department of the United States at Washington, and in the course of such investigation and during the said month of August, your orators' said counsel ascertained substantially the facts in this bill set forth. And thereupon your orators employed counsel both in the city of Philadelphia and the city of St. Paul to investigate the title to said lands and give opinions thereupon, and said investigation and the preparation of information on which to base this suit has been diligently prosecuted ever since, and your orators have commenced this suit as soon as it was possible under the circumstances for them to do so.

Your orators have and do hereby ratify the location of said military land warrant on the lands above described, and say that the said defendants and all persons having any right, title or interest in said lands arising under or through the said patent of the United States of America before set forth, are trustees of the said lands for the benefit of your orators. Your orators further state that the value of said premises exceed- the sum of twenty-five thousand dollars.

But the said defendants dispute said trust relation, and
33 deny that your orators have any right, title or interest in said premises, and claim to own the same or their respective interests therein absolutely free from any equity or right in your orators or any of them.

That said defendants falsely pretend and claim that the sale of said land warrant to the said Nathan C. D. Taylor was made in good faith for a consideration equal to the full value of said warrant paid by the said Taylor to the said widow and children, which claim and pretence is in no respect true, and the fact is that your orators have no knowledge, information or belief as to what consideration or whether any consideration was paid to the said Elizabeth Remsen guardian and widow; and your orators each and every of them deny that any consideration was at any time whatever paid to any of your orators who are the children of the said George W. Remsen.

And the said defendants further falsely pretend and claim that the said Nathan C. D. Taylor deeded the said premises to one Chas. D. Gilfillan in good faith and for full value, and that said Gilfillan deeded the said premises to one Henry McKenty in good faith and for full value, and that the said McKenty deeded the said premises to one Allen Pierse in good faith and for full value, and that the said Pierse afterward conveyed said premises to Pennock Pusey in good faith and for full value, and that said Pennock Pusey afterward conveyed said premises to John W. Tatum in good faith and for full value, and that the said premises were afterwards conveyed by the heirs of said Tatum in good faith and for full value to the

various defendants in this case, all of which pretences and claims your orators say are untrue. The fact being that each and every of the said persons in this paragraph above named and each and every of the defendants in this suit, purchased the said premises with full notice of your orators' rights; and as to whether the said persons or the said defendants or either or any of them paid full value
34 for said premises, or as to what consideration they or any of them paid therefore, your orators have no knowledge or information sufficient to form a belief.

The defendants further falsely allege and claim that the value of the improvements on said premises is over $2,000,000 which your orators deny to be the fact, but as to how much said improvements are worth, your orators have no knowledge or information sufficient to form a belief.

The defendants further falsely allege and claim that the said defendants and their grantors have been in possession of said premises under their said titles openly and notoriously, and have exercised acts of ownership over the same and paid the taxes and assessments thereon for nearly forty years last past, and that said open and notorious possession has continued for twenty years last past, and that said facts have existed with the knowledge of your orators. All of which claims and pretences your orators allege to be untrue, the fact being that until a few months before the commencement of this suit, your orators knew nothing whatever concerning said premises or the occupation thereof, or the title thereto, not knowing even that they ever had any claim to the same, or to the warrant under which the same were located and patented. Your orators expressly deny that the said defendants or any or either of them have been in possession at all of said premises or any part thereof for the period of fifteen years before this suit was commenced. But your orators admit that some of the said defendants have been in possession of portions of said premises, and as to exactly what length of time said possession has continued your orators have no knowledge or information sufficient to form a belief.

35 And the said defendants further falsely allege and claim that your orators, their ancestors and predecessors, have for many years had knowledge of the fact that said land was owned by said Taylor and his grantees and persons claiming under said Taylor, and that the said land was increasing rapidly in value, and that extensive improvements were being made thereon. All of which your orators expressly and positively deny, the fact being that until a few months before this bill was filed they had no knowledge whatever concerning said premises or the value thereof or improvements thereon. And your orators further allege that each and every of the said defendants has taken his title in said premises with full notice of your orators' rights as hereinbefore set forth, and has put upon said premises whatever improvements there may be thereon, also with full notice and knowledge of your orators' rights as above stated. And the said defendants who have judgments and mortgages against said premises or parts thereof, have acquired

their rights in the same manner with full notice and knowledge of your orators' title.

The said defendants further falsely pretend and claim that if they hold said lands in said trust for your orators, more than six years have elapsed since your orators' cause of action accrued before the commencement of this suit, and that hence the same is barred by the statute of limitations of Minnesota, which pretence and claim your orators say is without any foundation in fact. And your orators allege that no demand was ever made on the said defendants or any of them to recognize said trust relation or convey said premises, or account to your orators for the issues and profits thereof until about the date when this suit was commenced. And your orators further allege that said trust relation was absolutely unknown to your orators and each of them until within six months before this bill was filed.

36 The said defendants further falsely allege and claim that your orators have acquiesced in the title of the defendants and their grantors, and that your orators have therefore been guilty of such laches as ought in equity and good conscience to bar them from any relief in this action. Which pretence and claim your orators say is in every respect false, your orators never having in any manner acquiesced in the defendants' claims or any of them, or been guilty of any laches or delay which ought in equity to bar them from maintaining this suit.

All of which claims and proceedings of the said defendants are contrary to equity and good conscience. In consideration whereof, and inasmuch as your orators are entirely remediless according to the strict rules of the common law, and can only have relief in equity, and,

To the end that the said defendants may, if they can, show why your orators should not have the relief hereby prayed (an answer under oath being expressly waived) and that the said defendants may come to a fair and just account and may be decreed to convey unto your orators their several titles, rights and interests in said lands before described, and that in default of their executing said conveyances as decreed, the title to said premises may be passed unto your orators by decree of this court, and all right, title and interest of the said defendants and each of them, may be cut off and forever barred and declared void, and that your orators may have such further and other relief as the nature of their case shall require, and as may be equitable, may it please your honors to grant unto your orators the most gracious writ of subpœna of the United States of America to be directed to the said The Minnesota Transfer Railway Company, Maitland E. Graves, Lucia Clark, Florence Lucia Clark,

37 Archie Guthrie Clark, Fred Morse Clark, Louisa E. White, William O. Winston, Fendall G. Winston, Philip B. Winston, David C. Shepard, Peter Siems, Frank P. Shepard, Alvin W. Krech, James F. Jackson, William Deering, Rufus C. Jefferson, Charles F. Backus, L. L. Bennett, George Wilson, Jr., Nels P. Fransen, James L. Lovering, Leonard W. French, Hiram Backus, Lilton E. Shields, William H. Cleary, John A. Cleary, George Strong, Emily

R. Fisher, Frank H. McKelvey, Franklin C. Ford, George F. Copeland, Dora Marshall, Clinton Johnson, Leonard J. Dobner, Isabella Z. Kingsley, The Ramsey County Land & Loan Company, Henry S. Fairchild, Elizabeth Brophy, Edward Howard, Carrie L. Backus, Julia M. Callahan, Lewis H. Lipman, Mary C. Braden, Joseph A. Humphreys, Samuel M. Magoffin, Eleanor Tatum, Amy T. Hilles, Elizabeth T. Long, John Weber, William W. Bixby, Charles L. Walker, William H. Wright, Clarence E. Stone, Frank Crawshaw, Frank Greening, Desire H. Michaud, Josephine A. Huber, Lydia J. Andrew, Herbert M. Crosby, Clinton J. Backus, Amanda E. Johnson, Charles A. Baker, Luther B. Little, George H. Bridgman, John B. Sanborn, Emma E. Chapman, Henry C. V. Hunderup, Benjamin W. Smith, Jed. L. Washburn, Maurice Tracy, Maurice C. Tracy, William H. Fuller, John B. Rossman, Sidney E. Bibbins, Charles E. Lingquist, Charles E. Lindquist, Harcourt Mott, Ola S. Johnson, N. B. Hogg, Jr., E. J. Fargo, John H. Moreland, Willis Danforth, James R. McKay, Kingsley H. Burrell, Caroline M. Burrell, Edith E. Thomas, John Luby, Samuel Strows, Mary C. Thaw, Emily H. Miller, Jennie A. Severn, Thomas W. Martin, Henry Bosse, Kate L. McDermott, John Johnson, Henry C. Babcock, George Lamb, Michael Towey, Charrie A. Morton, Dan. Baker, James C. Hening,
38 Rachel H. Henning, Addie B. Mohler, Robert C. Wiley, Fannie W. Wiley, Tinsley V. Means, Ella B. Clark, Martin Johnson, Andrew G. Johnson, John Aronson, Henry L. Little, Hans Peterson, Owen Williams, Conrad Peters, Levi C. Emery, George R. Bartron, Charles F. Young, Mary Jane Ellison, Agnes A. Hamilton, W. J. O'Toole, M. E. Nelson, Frank A. Ackerman, Cybele B. Flower, Clara W. A. Blackman, Charles W. Heath, Nels Frederickson, Anson B. Baker, Anton Peterson, Robert K. Evans, Richard Evans, Jr., Richard Eavans, Jr., Joseph J. Vilsmeyer, Christian Bendixen, Charles P. Barstow, Mary C. Tatum, The St. Paul Congregational Union of Ramsey County, Minnesota, Marion E. Martin, Mary Brosnahan, Bridget I. O'Leary, Annie M. O'Leary, Bridget Eagan, Mary Eagan, Maria C. Killiam, Thomas Helgesen, The State Bank of Minneapolis, Orin L. Benson, Frank W. Buswell, Lizzie J. Smith, Wallace W. Campbell, George G. Benz, Oliver J. Graham, Freeman J. Page, Erastus H. Murray, Emma G. Lockwood, Michael O'Neill, Sadie E. Martin, Luther B. Little, Thomas G. Harvey, M. P. Ryan, Augusta A. Garrison, James O. Roberts, Jacob A. Roberts, William G. Chapman, John A. Lindquist, Mary A. Crawshaw, William W. Holcomb, Anthony Schimansky, Edward B. Storer, Paul J. Lowell, Elise Hohneck, Lily M. Brown, Hans Monson, Charles O. Moline, Emil Moline, John Larson, Lewis Larson, Carrie Larson, Annie Larson, Andrew Olson, John August Peterson, John H. Cunningham, Thomas A. Carlson, Klaus J. Larson, Prindle Partridge, Eli S. Montri, Laurits A. Larsen, Christopher Bendixen, William R. Murray, Frederick Bell, Carrie A. Morton, E. I. Hoyt, Mary Little, John Olson, August Olson, Albin Severson, Eleanora Langevin, Mary Eleanora Michaud, Emma Flanagan, Louis
39 A. Langevin, Eugene A. Langevin and Ida May Langevin, sole legatees and heirs of Edward Langevin, de-

ceased, Nancy A. Danforth, Delaskie Danforth, Henry W. Danforth and Charles A. Danforth, the sole heirs-at-law of Willis Danforth, deceased, George Drew, J. E. Wells, and H. H. Goodrich, The St. Paul Trust Company, Mary H. Farquhar, Peter S. Roberts, Wm. H. Willsey, Hannah Austrian, The German-American Building Association, The Lombard Investment Company, Maria W. Curtis, William K. Richardson and Winslow Warren, trustees under the will of Henry Richardson, deceased, William Brewster, Edward Motley, Maria A. Gilbert, Charles H. Wagner, I. F. Johnson, Gardiner Green, Jr., executor of the will of Rachel R. Wheeler, deceased, W. B. Hopkins, The Savings Bank of St. Paul, J. W. Frederick, Alfred F. Cooley, Oramel A. Richardson, John W. Bookwalter, as James Leffel & Co., The National Bank of Chambersburg, N. F. Towne, Mary M. Bacon, William B. Martin, John J. Guile, George Griffore, The Rice Street Building Society, Caroline Coleman, Mark W. Fay, Wilhelmina F. Phelps, The Simonds Manufacturing Company, Frank A. Berry, Howard Marston, The Workingmen's Building & Loan Society, The Ramsey County Building Society, Sarah C. Moore, Nora Brown, The Iowa Land Company, Limited, Elmer J. Barker, Martha R. Knauff, Pauline A. Hannaford, Horace E. Stevens, Dwight F. Brooks, Lester R. Brooks, and Anson J. Brooks, partners as Brooks Brothers, L. G. Kilborn, Eleanor Tatum, administratrix of the estate of Samuel C. Tatum, deceased, and Samuel C. Tatum, Jr., deceased, Homar C. Potter, The Globe Building Company, F. L. Elwer, L. G. Crandall, C. M. Stone, W. H. Stone and C. E. Tichener, partners as Crandall, Stone & Company,
40 William W. Parker, Thomas Tracy and Lawrence Tracy, partners as Tracy Brothers, William F. Nelson, The Bank of Minneapolis, Andrew Borklund, The J. P. Gribben Lumber Company, C. H. McCormick and L. J. McCormick, partners as C. H. & L. J. McCormick, William Peterson and Samuel B. Jelke, partners as William Peterson & Company, Anthony Kelly, Hiram J. Wagner and John I. Black, partners as Anthony Kelly & Company, William A. Campbell and George R. Lewis, partners as Campbell & Lewis, Chester G. Higbee, Charles Bergquist, Gilbert E. Holien and Charles B. Blomgren, partners as Holien & Blomgren, The St. Croix Lumber Company, Ole Oleson, Frederick D. Ford, Frank W. Foreman, Frank B. Foreman and Edward F. Upton, doing business as the St. Paul Stained Glass Company, The Bohn Manufacturing Company, B. F. Knauft, Lawrence I. Casserly and James R. Donnelly, partners as Casserly & Donnelly, John J. Biebighauser, George W. McGuiggan and Neil Kelliher, partners as McGuiggan & Kelliher, The Chapman-Drake Company, William Salisbury, Abraham Harris and Mark Harris, partners as Harris Brothers, The Todd Pulley and Shafting Works, Earnest D. Babcock, W. P. Riley, doing business as Valley iron works, The Allington & Curtis Manufacturing Company, W. C. Armstrong, James J. Armstrong and Bernard B. Armstrong, partners as Armstrong Brothers, Isaac B. Davis and John O. Davis, partners as J. B. Davis & Son, Hanford J. Perkins and Willis J. Perkins, partners as Perkins & Company, W. B. Dean, J. Ross Nicols, Sarah T. Nicols, Sarah C. Nicols, Emma

N. Pilkington, Henry Nicols and Jessie A. Gregg, partners as Nicols & Dean, The Canton Steam Pump Company, A. N. Nelson, treasurer of Ramsey county, Minnesota, W. E. Burton, treasurer of Ramsey county, Minnesota, F. A. Renz, treasurer of Ramsey county,
41 Minnesota, J. F. Wilcox, Frank Morand, The Gordon Steam Pump Company, William G. Mulligan, The St. Paul Foundry Company, Dan. Baker, Daniel A. J. Baker, George P. Clark, Levi Houston, F. E. Elmund and Gus Carlson, partners as Elmund & Carlson, The Woolson Spice Company, Richards Gordon, and Paul D. Ferguson, partners as Gordon & Ferguson, Andrew Schoch, The J. C. Hanley Lime Company, Robert Pearce, and Charles P. Price, partners as Pearce & Company, William Cunningham, Daniel B. Fisk, Daniel M. Fisk and John E. L. Frasher, partners as D. B. Fisk & Company, The German-American Hail Insurance Company, Andrew Johnson, James Davenport, Jr., William Poppenberger, F. C. Nelson, The Vulcan Iron Works, F. M. Schutte, doing business as Schutte & Company, The Northwestern Fuel Company, Geo. W. Griggs and Emery G. Griggs, partners as Griggs Brothers, Daniel M. Finlayson, Daniel H. Moon and Edgar C. Long, partners as D. M. Finlayson & Company, William Rodger and John D. Roberts, partners as Rodger & Company, Eugene R. Ide and James R. Thompson, partners as Ide & Thompson, J. B. Gazett, The St. Paul Trust Company as assignee of the estate of Henry Marine and Peter Zimmer, partners as Marine & Zimmer, Thomas Jefferson, P. J. Bowlin, doing business as P. J. Bowlin & Company, The Cleveland Brown & Company, The H. P. Rugg & Company, James L. Lovering, Henry S. Fairchild, Eleonor Tatum, Hannah Tatum, John B. Rossman, William R. Murray, Charles P. Barstow, Clarence E. Stone, Mary C. Tatum, Amy T. Hilles and Elizabeth T. Long, thereby commanding them and every of them at a certain date and under a certain pain therein to be specified, personally to appear
42 before your honors in this honorable court, and then and there to answer all and singularly the premises, and to stand to, perform and abide such order and decree therein as shall seem agreeable to equity and good conscience, and your orators will ever pray.

ELIZABETH WETZEL,
HARRIET A. VAN ZANT,
EMMA F. HERGESHEIMER,
MAGGIE L. BECKMAN,
JOHN WESLEY REMSEN,
MARY J. REMSEN,
GEORGE W. REMSEN,
CLARA B. REMSEN, AND
MABEL REMSEN,

By W. C. MAYNE, *Of Philadelphia, Pa.*,
CLAPP, BRAMHALL & TAYLOR,
Of St. Paul, Minn.,
LUSK, BUNN & HADLEY,
Of St. Paul, Minn.,
Their Solicitors.

C. W. BUNN, *Of Counsel.*

43 *Answer of Bridget Egan et als.*

And now come Bridget Egan *et als.*, defendants in the above-*above* entitled action, and, reserving to themselves all right of exception to the bill of complaint herein, for answer thereto say:

Defendants admit and allege that one George W. Remson in his lifetime became entitled to a land warrant for enlistment and services in the United States Army, under the terms of an act of Congress, approved February 11, 1847, entitled "An act to raise, for a limited time, an additional military force, and for other purposes," and the various amendments thereto, or upon the same subject. That said Remson, having died prior to the issuance of said land warrant, his widow and children became entitled to have the same issued to them, and thereafter the United States duly issued a land warrant, numbered 28811, to the widow and children of said deceased soldier, viz., to Elizabeth Remson, widow, to Harriet A. Remson, Mary Ann Remson, John Wesley Remson, Elizabeth Remson and George W. A. Remson, whom defendants admit and allege, on information and belief, were the children and heirs-at-law of Geo. W. Remson, deceased. That upon the issuance of said land warrant, aforesaid, the said widow and children became the owners thereof; that the same was personal property, and salable and assignable as personal property, and that the same entitled the assignee or assignees of the said widow and children to pay for 160 acres of public land with said land warrant, which said land warrant was of the value of not more than $100.

44 Defendants deny that the said Elizabeth Remson, widow of George W. Remson, was entitled to any dower in any lands so to be selected, and allege the fact to be that the said land warrant was a mere right to select lands, and was personal property; and deny that the assignment thereof was void, or that the assignment of Harriet A. Remson was void because her husband did not join with her in said conveyance, and allege that the said defendants have no knowledge or information, sufficient to form a belief, as to whether said Harriet A. Remson was a minor or was married at the time of the said assignment, hence deny the same.

Defendants further admit and allege that on the said 6th day of October, A. D. 1848, the said Elizabeth Remson was duly appointed the guardian of the said minor children of the said Geo. W. Remson, as in the bill of complaint alleged, and that the said orphans' court of the city and county of Philadelphia, had jurisdiction of the subject-matter and of the parties, and duly and properly made said appointment, and that the said Elizabeth Remson, for herself, and as guardian of the minor children of the said George W. Remson, deceased, and the said Harriet A. Remson, duly sold and assigned said land warrant to the said Nathan C. D. Taylor, and made and executed said assignment in writing, a copy of which said assignment is set forth in the bill of complaint herein.

Defendants deny that the said orphans' court never made any

order, decree, or took any proceeding authorizing the said
45 guardian to sell, transfer, or assign the interest of said minors in said land warrant; and deny that by the laws of Pennsylvania and the said act of Congress before mentioned, the said guardian had no authority to sell and transfer the said land warrant; and allege that the said guardian was duly authorized and had power to make said assignment and sale; that under the laws of Pennsylvania and the laws of the United States at the time of said transfer and assignment it was not necessary to procure from the orphans' court or probate court or any court, any order or decree authorizing the sale of said land warrant; nevertheless the said orphans' court of the city and county of Philadelphia did, by the appointment of said Elizabeth Remson, aforesaid, duly authorize her to sell, assign and transfer said land warrant; and the said sale was made in good faith, for a consideration equal to the full value of such warrant, paid by the said Nathan C. D. Taylor to said widow and children; and thereupon and on said 11th day of October, A. D. 1848, the said Nathan C. D. Taylor became the owner of said land warrant by purchase, as aforesaid.

Defendants deny that the said Harriet A. Remson was ignorant of the said instrument of assignment when she signed the same, and deny that she signed the same believing it to be a receipt, and allege, that she at all times knew the nature of said assignment, and received her share of the consideration therefor. Defendants deny that the complainants and their predecessors in interest were ignorant of the assignment of said land warrant, or that said
46 land warrant had ever been issued, that the said Geo. W. Remson was entitled to a land warrant, and allege that they have at all times known that the said Geo. W. Remson was a soldier in the Mexican war and entitled to a land warrant, and severally knew that the land warrant in question at the time when the same was issued was duly and properly issued to them, the said widow and the said heirs of Geo. W. Remson, and defendants allege that from the date of the issuance of said warrant to the date of its assignment to Taylor the said widow and heirs had actual possession thereof; and defendants aver that they have no knowledge or information, sufficient to form a belief, as to the averments in said complaint, stating the manner and form in which they became acquainted with their pretended rights and claims in said real estate and hence deny the same.

Defendants further allege that the said Nathan C. D. Taylor, being the owner of said land warrant, duly located the same upon the said southwest quarter of section twenty-eight, township twenty-nine, north of range twenty-three west, being the said land in question; that the said entry was made on or about October 31, 1849, and that thereafter and on or about the 20th day of March, A. D. 1850, the United States, through its proper officers, duly issued to the said Nathan C. D. Taylor a patent for said lands, thereby conveying said lands to the said Nathan C. D. Taylor, in fee-simple, and that said patent was thereafter and on January 8th, A. D. 1852, duly recorded in the officer of the register of deeds of Ramsey

county, in the State of Minnesota, in Book "C" of Deeds on
47 page 288. That prior to the receipt of said patent, the land department duly and properly allowed the said Taylor to enter said lands, and duly accepted the said land warrant of said Taylor in payment therefor. That thereafter, and on or about the 28th day of April, A. D. 1854, the said Nathan C. D. Taylor made, executed and delivered to Charles D. Gilfillan, a bond for a deed, wherein and whereby the said Taylor contracted and agreed to sell said land to the said Charles D. Gilfillan, for the sum of six hundred (600) dollars, to be paid on or before August 1st, A. D. 1854; and on or about the said 28th day of April, A. D. 1854, the said Charles D. Gilfillan in pursuance of said contract purchased the said lands of the said Taylor, in good faith, without any knowledge of any claim thereto by said widow and children or heirs-at-law of the said George W. Remson, or of any other person or persons, and paid the said Taylor therefor six hundred (600) dollars, being then and there the value of said land; and the said Taylor then and there, by warranty deed, duly and properly executed, conveyed said land to said Charles D. Gilfillan, and the said deed was thereafter and on May 24th, 1854, duly recorded in the office of the register of deeds of Ramsey county, Minnesota, in Book "H" of Deeds on page 284. That thereafter and on or about the said 28th day of April, A. D. 1854, the said Charles D. Gilfillan sold the said land to one Henry McKenty for the sum of one thousand (1,000) dollars then and there by said McKenty paid to the said Charles D. Gilfillan, and the said Gilfillan then and there made, executed and delivered to the said McKenty, a warranty deed of said lands, which deed was filed
48 for record in the office of the register of deeds of Ramsey county, Minnesota, on May 25th, A. D. 1854, in Book "H" of Deeds, on page 297. That at the time said McKenty purchased said land he had no knowledge or notice of any claim thereto by said widow, children and heirs-at-law of the said George W. Remson, or any other person or persons than the said Charles D. Gilfillan. That thereafter and on the 22nd day of May, A. D. 1854, the said Henry McKenty sold the said land to Allen Pierse for the sum of two thousand (2,000) dollars, being the full value of such land, then and there by said Allen Pierse paid to the said McKenty, and the said McKenty then and there made, executed and delivered to the said Pierse a warranty deed of said land, which deed was recorded in the office of the register of deeds of Ramsey county, Minnesota, on May 29th, 1854, in Book "H" of Deeds on page 316. That the said Pierse purchased the said lands *bona fide*, and paid said consideration in good faith, without any knowledge or notice of the said pretended claims of the widow, children and heirs-at-law, of the said George W. Remson, or of any other person or persons, in and to said land. That thereafter, and on June 2nd, A. D. 1855, the said Allen Pierse, his wife joining therein, duly conveyed said lands to Pennock Pusey, by deed of warranty, and the said Pusey then and there paid to the said Allen Pierse, for said land, the sum of three thousand (3,000) dollars, the full value thereof; that said deed was duly recorded in the office of the register of deeds of Ramsey

county, Minnesota, on June 2nd, 1855, in Book "K" of Deed
49 on pages 670 and 671. That the said Pusey purchased sai
lands and paid said consideration without any knowledge c
notice that the said widow and heirs-at-law had or claimed any i
terest therein, or that any other person or persons so claimed an
interest therein, and relying upon the fact that the said land b
longed to said Allen Pierse. That thereafter, and on May 4th, 186
the said Pennock Pusey sold and conveyed said land to John W
Tatum, and on said day, by deed of warranty, duly conveyed sai
land to said Tatum, which said deed was filed for record in the offic
of the register of deeds of Ramsey county, Minnesota, on May
1860, in Book X of Deeds, on page 207. That the said Tatum the
and there paid said Pusey the sum of thirty-two hundred (3,20
dollars for said land, the same being the full value thereof, and s
purchased and paid for said land *bona fide*, in good faith, and with
out any knowledge or notice of any claim thereto by the widow an
heirs of said Remson or of any other person or persons; and tha
the said Tatum and all the other purchasers hereinbefore stated, s
purchased and paid full value for the same without any knowledg
or notice of any of the pretended facts set forth in the bill of com
plaint herein, which, it is claimed invalidates the said assignmen
That thereafter the said John W. Tatum died testate, and by hi
last will and testament the said land was devised to his three chi
dren, Samuel C. Tatum, John R. Tatum and Hannah Tatum, an
that the said will was duly admitted to probate in Ramsey county
Minnesota, on June 11, 1883. That the said probate cou
50 then and there had and acquired jurisdiction of the sai
estate and of the parties thereto.

Defendants admit and allege that by various and sundry mesn
conveyances from the heirs of said John W. Tatum, deceased, th
said land has been conveyed to, and is now held and owned by, th
various persons set forth in the said bill of complaint as defendant
therein, and as hereinafter more particularly stated.

Defendants allege that at the time said land was entered by th
said Nathan C. D. Taylor it was not worth to exceed $1.25 per acre
that the said land increased in value, from year to year, that th
same is now worth and of the value of upwards of $1,000,000 ove
and above the improvements thereon and is owned by several hun
dred innocent purchasers, these defendants, and has been absorbe
by and become a part of the city of St. Paul, and has for many
years lain within its corporate limits; that a large part of the sam
has been platted into additions to the said city of St. Paul, and such
additions subdivided into blocks and lots; is covered with many
houses and occupied by many actual residents; which said improve
ments are of the value of more than two million dollars; that fo
many years last past extensive and valuable improvements hav
been placed upon said land, the exact value defendants are unabl
to state, but crave leave to make proof; that the said defendant
and their grantors have been in the possession of said land, unde
their said titles openly and notoriously, have exercised act
51 of ownership over the same, and have paid the taxes an

assessments thereon for nearly forty years last past, to the amount of many thousand dollars, the amount thereof respondents are now unable to state; that said land has been sold from year to year and notoriously in the possession of the various purchasers, all with the knowledge of the said plaintiffs.

Defendants allege on information and belief that the said plaintiffs, their ancestors and predecessors, and the said widow and heirs-at-law of the said George W. Remson have, for many years last past, had full knowledge of the fact that said land was owned by said Taylor, his grantors, and the various persons claiming under said Taylor, as in the bill of complaint alleged; that the same was increasing rapidly in value; that a portion of a great city was located thereon; that elevators, railroad tracks and warehouses had been and were being erected thereon, and they aver that notwithstanding the complainants so possessed such knowledge, they did with such knowledge make no claim or demand whatever of any right to any of said property at any time before the filing the complaint herein.

Defendants further allege that by various mesne and sundry conveyances from the said heirs of John W. Tatum, which said conveyances were deeds of warranty, through various persons, the defendants herein have become the *bona fide* owners of and purchased certain portions of said land for full value, in every instance paid without any knowledge or notice of any of the facts upon which complainants claim or either or any of them. That hereto
52 attached, and made a part of this answer, is a schedule, marked Ex. A, showing the present owners of said land, the amount paid therefor by each of them and the value thereof, together with the value of the improvements thereon, which said improvements were made thereon in good faith by said owners or those under whom they claim and without notice of said pretended claim. That each one of said owners purchased said land in good faith and paid therefor the said sum without any knowledge or notice of the said pretended claims of the widow and heirs-at-law of the said George W. Remson, as in the bill of complaint set forth or otherwise, and received a warranty deed of said lands from their immediate grantors who were also *bona fide* purchasers for full value and without any such knowledge or notice, and defendants pray that they be allowed to make proof of their chain of title, and of the various deeds constituting the same, without setting the same up in this answer, owing to the great number thereof.

That the defendants each severally own and hold purchase-money mortgages and mortgages for money loaned on some certain portions of said land which said mortgages were given for a part of the purchase price of said various pieces of land and for money loaned thereon and which said mortgages are duly of record in the office of the register of deeds of Ramsey county, Minnesota. That hereto attached and made a part of this answer is a schedule of said mortgages marked Ex. "B," showing the maker of said mortgage, the date, amount and the description of the land covered by each

mortgage. That each one of said mortgagees received said
53 mortgages for the purchase price of said various pieces of land and loaned said various sums of money to said mortgagors and received said mortgage securing the same *bona fide* and without any knowledge of the pretended facts alleged in the bill of complaint as the basis of complainants' claim.

Defendants further allege that they and their immediate grantors and ancestors have been in open, notorious and continuous adverse possession of said land for more than twenty years before the commencement of this action, claiming under their aforesaid titles and that said plaintiffs, their ancestors, predecessors or grantors were not seized or possessed of said land or any part thereof within fifteen years before the commencement of this action.

For second and further defense the defendants allege that if the said defendants hold said land in trust for the plaintiffs herein, as alleged in the bill of complaint, more than six years have elapsed since said cause of action accrued, and before the commencement of this action, hence the same is barred by the statutes of the State of Minnesota, being the 7th subdivision of section six, of title two, of chapter sixty-six of the statutes of Minnesota.

And they further aver that the complainants and each of them and their ancestors had discovered and well knew all the alleged facts and circumstances set out in the bill and constituting their cause of action many years more than six years before the commencement of this action, and that those of the complainants or their ancestors who were infants when the assignment and patent were made to Taylor discovered and well knew all said facts
54 and circumstances upon attaining their majority and many years more than six years before the commencement of this action; and all the grandchildren of the said George W. Remson discovered and well knew all such facts and circumstances upon attaining their majority many years more than six years before the commencement of this action.

And for further defense they aver that the complainants and those under whom they claim did with such knowledge aforesaid refrain from making any claim to any of said property whether by action, demand, notice or otherwise, but with such knowledge acquiesced in the title of the defendants and those under whom such defendants claim, and that thereby the complainants and those under whom they claim have been guilty of such laches as in equity and good conscience ought to bar them from any relief whatever in this action.

And for further defense the defendants aver that long before the commencement of this action, and when they the said complainants and each of them were of and long past full age of majority the said complainants and each of them did with full knowledge of all the facts set up in their bill of complaint as constituting their cause of action, and of all the additional facts set up in this answer as constituting a defense in all respects ratify and confirm the assignment of said land warrant to Taylor; its deposit with and receipt

by the United States and the issuance of a patent thereon to said Taylor in his own right and free of any trusts whatever.

Which and similar acts of ratification have since been
55 frequently repeated, the last one being in and by the bill of complaint herein to which for such purpose these defendants crave leave to refer.

Wherefore defendants pray that they be hence discharged, and that they have judgment for their costs and disbursements herein.

C. H. BENEDICT AND
DAVIS, KELLOGG & SEVERANCE,
Said Defendants' Solicitors.

C. K. DAVIS, *Of Counsel.*

56 *Replication.*

These replicants, saving and reserving unto themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith, that they will aver and prove their said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the defendants is uncertain, untrue and insufficient to be replied unto by these replicants, without this that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true, all of which matters and things these replicants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

WM. C. MAYNE,
CLAPP, BRAMHALL & TAYLOR,
LUSK, BUNN & HADLEY,
Complainants' Solicitors.

C. W. BUNN, *Of Counsel.*

57 *Testimony.*

Meeting held at the office of the examiner, Henry R. Edmunds, Esq., No. 425 Walnut street, Philadelphia, Pa., at 10.30 o'clock, a. m.

Present: The examiner, Henry R. Edmunds, Esq.; William C. Mayne, Esq., for complainants; Frank B. Kellogg, Esq., for defendants.

ELIZABETH WETZEL, having been duly sworn, was examined as follows:

By the EXAMINER:

Q. Where do you reside now?
A. No. 417 Rihl street, Philadelphia.
Q. Are you married or single or a widow?
A. I am a widow and have been for 25 years, I guess, if not more.
Q. How old are you?
A. I was 78 last July. I think 1814 I was born, July 2d.

By Mr. MAYNE:

Q. You are the widow of whom?
A. Paul Wetzel.
Q. When were you married to Mr. Wetzel?
A. I can't recollect the month. It was in June or July, I don't know which. I can't remember the year. I was only married about two years and one month before he died.
Q. (Paper shown witness.) Is that your marriage certificate?
A. Yes, sir, this is it.

58 Complainants' counsel offers in evidence marriage certificate referred to, the same being marked "12-17-'92, Complainants' Ex. 1, H. R. E."

(Defendants' counsel objects to said certificate as incompetent, irrelevant and immaterial.)

By Mr. MAYNE:

Q. To whom were you married before your marriage with Mr. Wetzel?
A. Mr. Remsen. There may be a difference in there in regard to the name. We used to be called in a more German old-fashioned way; they would say "Remsden." About 25 years, I guess, or maybe more, they began to spell their names a little more particular. It was through an uncle that came on somewheres away off; he said that it was such an old country way, so they got to calling it Remsen. One part of the family goes by the same name yet, spelling it the old way of spelling. That is the correct name that is on the certificate there.

(Defendants' counsel objects to the foregoing testimony as to the spelling of the name and the explanation of the witness as incompetent, irrelevant and immaterial.)

Q. (Paper shown witness.) Look at that paper and tell me what it is.
A. I can't read it, but I know what it is by the looks of it. I got that paper from Anthony Atwood to produce it to the lawyer when I got my husband's wages and pension certificate. I got a copy from the record. Because the one I had when I was married was
59 cut in three pieces. It was nothing but a stiff piece of paper. And that is the copy I got when I was settling. It wasn't used.

(The paper referred to is marked "12-17-'92, for identification, A.")

Q. Where were you married to Mr. Remsen?
A. At the parsonage.
Q. What church?
A. St. George's.
Q. In what city?
A. Philadelphia, either Fifth or Sixth street, I don't know which, below Vine, I don't recollect.

Q. By whom were you married?
A. Manning Force.
Q. Who was Anthony Atwood?
A. He was in charge at that time the same as this man is in charge.
Q. Did you make application to him for this certificate?

Objected to as irrelevant and immaterial.

A. Oh, yes, I was told I would want it.
Q. And did he give you this?
A. Oh, yes, he gave me that.

Complainants' counsel offers in evidence said paper, the same being marked "12–17–'92, Compl'ts' Ex. 2, H. R. E."
Objected to as incompetent, irrelevant and immaterial.

Q. What was your maiden name?
A. Elizabeth Hopkins.
Q. When did Mr. Remsen, your husband, die?
A. I don't remember how long it has been. It is in the deaths though. You have that.
60 Q. (Bible shown witness.) Is this the book you refer to?
A. Yes, sir. It is in October some time. I think it is in that. If it isn't it is in the copy I have got.
Q. Is this the family Bible?
A. Yes, sir. That is the one my son has now. I have it on a slip, a piece of paper. You have it there the same, copied out of that.
Q. I see, under the caption of "Deaths" this: "George W. Remsen departed this life on the 11th day of October, 1847, in the 38th year of his age"?
A. That is it.

Defendants' counsel objects to counsel for complainants reading to the witness from the book, on the ground that the book is not evidence and is incompetent and there has been no proper foundation laid for its introduction.

Q. Where did your husband die?
A. In Mexico. I forget the name of the place. They did send me word, but I don't remember.
Q. What was the character of his business in Mexico?
A. Stone mason and bricklayer.
Q. What was the character of the business he was doing in Mexico?
A. He took a great notion to go.

By the EXAMINER:

Q. What was he doing there?
A. He was among the soldiers. He went among the soldiers. When they went from Philadelphia he went away with them. If he hadn't been among them I couldn't have drawed a pension, you know.

61 Q. Look at the handwriting in this book and tell me whether or not you know in whose handwriting it is.

A. The last part of it has been since his death. Mary's, my son, her husband, he wrote where his sister is dead, he wrote the most of it.

Q. The fore part under the marriages, who wrote this?

A. He wrote deaths and all, my son George.

Q. When did he make these entries in this book, your son?

A. I do not know. It has been years ago. I can't tell how long. Before he was married he wrote some—he wrote his sister's death before he was married. He wrote all pretty near that is in.

Q. How old was your son George when he made the first entries?

A. I can't recollect.

Q. About how old?

A. I couldn't begin to say because I don't remember, but he was not very old certainly.

Q. Was it before he was married?

A. Let me think. It was copied out of another Bible. I can't recollect whether it was just before he was married. If he was not married it was very soon afterwards. I would not like to be qualified that it really was after he was married or before.

Q. You say those entries were copied out of another Bible?

A. Yes, sir. John has the old part, it got all wore, that I had on paper.

Q. John has got that book, has he?

62 A. No, sir. I can't remember. It seems to me George, the last he wrote, was after his sister's death.

Q. Has John Wesley Remsen, your son, got the Bible from which these entries were copied?

A. He has got the paper, which is the same as this is. I had it wrote off of this. This was the first and George wanted a Bible, and this is his. It was my son's Bible.

Q. When you speak of George who do you mean?

A. I mean my son.

Q. Had he any middle name?

A. Yes, sir. George Washington Alexander Remsen, the one that wrote in this book. That is his wife that is here. He wrote it in it. It was before he was married he wrote the most of it, because his sister died before he was married.

By the EXAMINER:

Q. Did you say that these entries in this Bible were copied out of another book?

A. No, those were not. I had a copy taken off of them.

Q. Your copy was copied into another book?

A. Yes, sir; a copy that I have got myself is copied out of that. That is no copy.

Bible offered in evidence by Mr. Mayne.

Defendants' counsel object to the entries in the book and to the

book as incompetent, irrelevant and immaterial. There is no proper foundation laid for introduction of the memoranda in the book.

Offer of Bible withdrawn for the present by Mr. Mayne.

By Mr. MAYNE:

63 Q. How many children had you by George W. Remsen?

A. Six, five living and one dead. One died young. There were five surviving children.

Q. Did your son George Washington Alexander Remson marry?

A. Yes, sir; that is his wife out there.

Q. Whom did he marry?

A. Mary Jane Derbeshier.

Q. What was the name of your eldest child by George W. Remsen?

A. Harriet.

Q. Had she any middle name?

A. I think she had. She had when she was a child, but I do not know whether she ever gave it or not. Her middle name was Adams. That I wouldn't like to be positive of, for a great many don't think of the middle name always.

Q. Did she marry?

A. Yes, sir. She married Jacob Heyer.

Q. Do you know about when she married?

A. I can't recollect. It was somewhere about the time before the Mexican soldiers returned, but I can't recollect.

As — the testimony as to the marriage of Harriet, Mr. Kellogg objects unless the witness was personally *personally* present and knows of her own personal knowledge. That the testimony is incompetent as offered at the present time.

Q. Were you present at the wedding of your son George W. A. Remsen to Mary J. Derbeshier?

A. Yes, sir.

64 Q. Where was George W. A. Remsen married?

A. On Fifth street above George by the Reverend McCleary. He was the preacher then at the Sanctuary. I was at his house when they were married.

Q. Were you present at the marriage of your daughter, Harriet A. Remsen to Mr. Heyer?

A. No. They went from home to the minister's house. I knew they went to the minister's house.

Q. Did you ever visit your daughter, Harriet A. Remsen, and her husband?

A. Certainly. I was there and took care of her when she was sick at one time, or assisted in taking care of her.

Q. You have named two of your children. Will you name the others?

A. John comes after Harriet—he didn't—Mary Ann did, but she is dead, Mary Ann, John, Elizabeth, then George the next.

Q. Had John any other name?

A. Yes, sir; Wesley.

Q. Had Elizabeth any middle name?
A. Annie, I think. I think it is down Annie.
Q. Do you know the date of the birth of your daughter, Harriet A.?
A. Yes, sir. It was the day after New Year's. I can't think of the number. I know it was the day after New Year's.
Q. What year?
A. That is more than I can tell you. I can't remember that; it is too far back.
Q. Do you know about what year?
65 A. I can't recollect. I wouldn't like to say because I don't remember.
Q. What was the next child born to you?
A. That died. Her name was Mary Ann.
Q. Do you know when she was born?
A. She was born the 22d of February. I can't remember the year. I can't remember the years; it has been too long back.
Q. What was the next child?
A. Mary Ann. We gave her the same name.
Q. Do you know when she was born?
A. I think it was the 12th of August. I am not certain.
Q. Is she still living?
A. No. That is Laura and Emmie's mother, my grandchildren.
Q. Whom do you refer to as Laura and Emmie?
A. The two grandchildren of mine. It was their mother, Emma Hergesheimer, my grandchild, and Laura Beckman. Becket was her father's name. Laura Beckman is Mary Ann's child.
Q. What was the next child after Mary Ann?
A. John Wesley.
Q. Do you know when he was born?
A. No; I can't recollect. I think it was the 8th of the month, though I can't recall the month.
Q. Do you know the name of the next child after John Wesley?
A. Elizabeth.
Q. Do you know when she was born?
A. The 22d of February.
Q. Had she any middle name?
66 A. Annie. It is there I guess. (Bible.)
Q. Did you know Elizabeth Walcott Remsen?
A. No. If I understand you right, Elizabeth Walcott? You are right, that was her name, Walcott, she was called. That was it. I remember now. That was Lizzie's name. I couldn't understand you.
Q. What was the next child after this one?
A. George Washington, Mary's husband.
Q. Is that his full name?
A. Yes, sir; George Washington Alexander.
Q. Do you know when he was born?
A. I think it was a fall month. I am not sure.
Q. Is John Wesley Remsen living or dead?
A. He is living.

Q. Where does he reside?
A. Near Millsborough. I forget the name of the State. Maryland, I think. It is the lower part of Delaware anyhow, if it is not Maryland, but I think it is Maryland.
Q. Is Elizabeth Walcott Remsen living or dead?
A. She is dead.
Q. Did she leave any children?
A. No.
Q. Is George W. A. Remsen living or dead?
A. He is dead as far as we know.
Q. When did you last hear from George W.?
A. I can't recollect. I paid no particular attention to it.

Mr. Mayne offered in evidence, record of the marriage of George W. Remsen, and Miss Elizabeth Hopkins, and the births of George W. Remsen, Miss E. Remsen, Miss Harriet Remsen, Mary Ann
67 Remsen, Mary Ann Remsen, John Wesley Remsen, Elizabeth Walcott Remsen and George Washington A. Remsen as contained in the Bible, and also the record as to the marriage of George W. A. Remsen to Miss Mary J. Derbeshire; and as to the deaths of Mary Ann Remsen, George W. Remsen and Annie E. Remsen.

Objected to by defendants' counsel as incompetent, irrelevant and immaterial, no proper foundation having been laid for the introduction of the entries.

Paper produced marked by the examiner "No. 3, H. R. E., 12-17-'92."

Q. Did you ever make any claim against the Government of the United States for or on account of your husband, George W. Remsen, deceased?

Objected to as irrelevant and immaterial.

A. You mean did I write to them for anything?
Q. Did you ever make any claim against the Government?
A. You mean, did I receive from the Government? I had a lawyer to get his wages and got his wages, what was coming to him, and I got a pension certificate, and the lawyer got a land warrant. I am not sure whether that is the name or not.
Q. Do you know what the number of that land warrant was?
A. No, sir. I didn't hear it read. I know nothing about it.

It is agreed by counsel that the certified copy which is produced by Mr. Kellogg as counsel for some of the defendants and by Mr. Mayne as counsel for the complainants, that the same be of-
68 fered in evidence and marked Complainants' Exhibit No. 4, the same not to be attached to the deposition, but to be produced at any time, and may be referred to in the index by witnesses with the same purpose and with the same effect as though the original was produced.

Q. When did you receive the land warrant from the Government?

A. I didn't have it at all. The lawyer got it and told me that he had it. The lawyer got it for me but I didn't have it.

Q. In consequence of what the lawyer said to you what did you do with respect to this land warrant?

A. My sister was dead. I went in the evening and signed it, but he was not there. He left it.

Q. Who went with you?

A. My daughter. I got her to go for company.

Q. Who was she?

A. Harriet Heyer; she went with me.

Q. What did you receive, if anything, for it?

A. I can't say the amount, but I can tell what he told me. I don't remember what it was.

Q. What did you do with what you got?

A. I spent it for the house, and I couldn't say whether it is $100 or what.

Q. Did you tell Harriet to sign it?

A. Yes, sir. I thought she ought to. I didn't know. It was me asked her to sign it. I said to the alderman, "Hadn't she better put her name on?"

Q. Did you tell her what it was?

A. No, I didn't tell anything.

69 Q. How old was Harriet at that time?

A. I can't say how old she was exactly, for I don't recollect.

Q. About how old?

A. I don't recollect at all. She must have been between seventeen and eighteen, somewheres along there. I can't say for sure. She might not have been quite that old. She might have been seventeen. I wouldn't like to say.

Q. Where were you living at that time?

A. In St. John street and Beaver, Philadelphia. That is next to Second street.

Q. Had you any of your children living with you at that time?

A. They were all living with me.

Q. Who all were living with you at that time?

A. They were all small but her. She was the biggest.

Q. Who were they? Name them.

A. John, Mary, Elizabeth and George and Harriet was there for some time. I don't know how long, a short time after she was married, not long.

Q. Living at your house with Mr. Heyer?

A. Yes, sir. She was living home when she was married but she was not home long. They were all small.

Q. Did you tell the children that you had signed this land warrant?

A. No, sir. I never told my children anything about my business. I was not that kind of a person. They were too young for me to go talking to them.

70 Q. Did you tell them you had received a land warrant from the Government?

A. No, sir. I never talked about it to any of them. I hadn't the mind people has got in these days to think anything about it.

Q. Have you any knowledge of the cancellation or this land warrant and a patent issuing thereon?

Objected to as irrelevant and immaterial.

A. No. If I understand it right, and I think I do.

Q. Do you know how much land the warrant called for?

A. No. I don't know what that called for, but I heard other ones talking, persons about there getting one hundred, and, I am not positive, but I think one hundred and sixty acres, I am not sure. I heard them talking afterwards, but I don't remember whether I am right or not. I didn't learn it from the paper. I heard different ones talking.

Q. Had you any knowledge where this land was located under this land warrant?

Objected to as irrelevant and immaterial and as hearsay.

A. No, sir; I never knew anything about it.

Q. You are one of the complainants in this suit, are you not?

A. I don't understand.

By the EXAMINER:

Q. Are you one of the parties to this suit?

A. It appears I am. I didn't expect to be in it.

By Mr. MAYNE:

71 Q. You have had read to you the matters the subject of this suit? When did you first learn them?

Objected to as irrelevant and immaterial.

A. The first of my knowing anything about it was, a gentleman came on and came to our house. Do you mean when I heard of it?

Q. Yes.

A. There was a gentleman came on. He went to my daughter-in-law's and she fetched him to our house. That was the first of my knowing about the land from the time it went out of my hands, having signed it, that was the first of my thinking or knowing. I didn't know anything about it, this man came and spoke about there being land.

Q. Did he tell you where the land was?

A. No. I asked him but he didn't answer me. I never knew where it was and never remembered the name where he came from until some few days ago one of them named the name and I said "That is the place that man came from."

Q. What did he want you to do?

A. He told me there was land coming to me that belonged to me, and I said "Where is it?" and he said something else, he didn't tell me where it was. I said I didn't know that there was. He went on talking and then he asked me something about him sell-

ing it—giving him power to sell or something. I don't remember what. I was very sick at that time. I was sick in bed.

Q. Did you give him any power to sell?

A. No. He asked about it, and I said, "I don't know anything about it," and I said, "You are a stranger to me and I am a stranger to you, and I would sooner know something further." Mary was present at the time.

72

Cross-examination.

By Mr. KELLOGG:

Q. (Exhibit No. 3, Bible, shown witness.) Can you read?

A. No, sir; I cannot see.

Q. Could you ever read?

A. Yes, sir. Some little. Not much though.

Q. Could you ever read writing?

A. No, sir.

Q. You do not sign your own name, do you?

A. No, sir. I just make my mark. When I receive any money from my granddaughters or anything I touch the pen.

Q. That is the way you always signed your name, just touch the pen?

A. Yes, sir. The lawyer told me when I went with my daughter to hold the pen.

Q. You never could read writing, could you?

A. No, sir.

Q. You never learned to read writing?

A. No, sir.

Exhibit No. 3 shown witness.

Q. You cannot read that writing in Exhibit 3, can you?

A. No, sir; I couldn't.

Q. You never could read that writing?

A. No, sir.

73 Q. Could you ever read that writing?

A. No, sir. I could not do it, but I saw it wrote.

Q. You would not know one man's writing from another, would you?

A. I don't know. Some I might and some I mightn't. But I know who wrote that.

Q. You say you know who wrote it?

A. Yes, sir.

Q. Who wrote it?

A. My son wrote part of it.

Q. (Referring to first page of Exhibit "3.") Who wrote the first page?

A. I wouldn't like to say positively, but I think he did. I think he wrote the whole of it. All but the last.

(Pages in Exhibit "3" marked 1 to 4 inclusive.)

Q. Do you know who wrote page one?

A. No; I can't say, but I think my son wrote the whole of it.

Q. You do not know whether he did or not; you cannot tell from looking at it?

A. I can't tell from looking at it. But I know no one else ever wrote anything in it but him. I think it is all alike. I can't say he wrote the whole of it.

Q. Do you wear glasses?

A. No.

Q. Could you read with glasses?

A. No, sir. I can't read writing.

Q. You do not knew then whose handwriting that is on page one.

74 A. I can say I knew who wrote it. I know when it was wrote in.

Q. What year was page one written?

A. I can't tell you that.

Q. Where was it written?

A. It was written in my house, but I can't tell you how long ago.

Q. Did you see it written?

A. I saw my son writing it in the Bible.

Q. You do not know then that he wrote on the first page of the Bible?

A. I can't say, but I think he did.

Q. You do not know for sure whether he did or not?

A. I am not positive, but I am most certain he wrote it all.

Q. Is the second page in the same handwriting as the first page?

A. It may be, but I can't tell, because this is so much darker than that. That is wore off more.

Q. Do you know when the second page was written?

A. No, sir.

Q. Do you know whose handwriting it is?

A. No, I can't say I do, without it is his.

Q. Do you know in whose handwriting the third page is in?

A. What is there; what is on it?

Q. I will read part of it. "Births. Miss Mary J. Remsen was born on the 18th of August, 1845."

A. What is the last?

Q. The last entry is Mabel Remsen.

75 A. That is not his handwriting.

Q. Is any of that page 3 his handwriting?

A. All I know, I know by the names. What is the last?

Q. The last is Mabel Remsen. One is Clara B. Remsen and George W. Remsen.

A. He might have written this, but he didn't write Mable.

Q. Anna E. Remsen and M. J. Remsen.

A. He wrote the first of them. The son and the other daughter, but he didn't write Mabel's because he was not home. I don't think he wrote hers.

Q. Did he write the Clara B.?

A. I think he did. His wife will know better.

Q. Did he write George W. Remsen?
A. I think so.
Q. You do not know positively?
A. I do not know positively. His wife will know better than I do.
Q. Did he write page 4; Mary Ann Remsen?
A. Yes, sir.
Q. George W. Remsen?
A. Yes, sir. If it is not his wife he wrote them.
Q. Anna E. Remsen and Anna E., daughter of G. W. A. and M. J. Remsen. Did he write those?
A. I can't say.
Q. The last entry on page 4, Anna E., daughter of G. W. A. and M. J. Remsen. Did he write that?
A. Yes, sir. He must have written that.
Q. Did you see him write that?
A. He wrote his sister's death.
76 Q. I will read the whole of the last entry on page four. "Anna E., daughter of G. W. A. and M. J. Remsen departed this life."
A. He wrote that.
Q. "On the 18th day of August, 1865, aged four months and three weeks."
A. That is his little girl.
Q. Did he write that?
A. Yes, sir; he wrote that.
Q. Did you see him write that?
A. I didn't see him but I know he wrote it.
Q. How do you know if you did not see?
A. I know. They told me.
Q. You did not see him write that?
A. I didn't see him write it, but I know he did put it in.
Q. Did he live with you at the time?
A. Yes, sir.
Q. At the time his little girl died?
A. No, sir. But I had the Bible at my house yet.
Q. Did you always keep this Bible at your house?
A. I had it at my house until the years when she first went to keep house. Not when she first went, because they went to the country and was boarding, when they came back home—I sent the Bible when they came back.
Q. When that little girl died they were not at home?
A. They were at its grandfather's when it died. When he came and got the Bible he wrote it in.
Q. You did not see him write that?
A. No, sir.
77 Q. All you know about it is what they told you?
A. I won't be positive of that. I won't be positive they told me anything about it. I know he told me he had put the little girl's death in the Bible. His sister's death and all this he wrote.

Mary knows more about her own family in regard to that than I do.

Q. All you know about it is you saw him writing in this book?

A. I saw him writing and I saw him writing his sister's death.

Q. How many years ago did he write it?

A. I don't remember how many years. She has been dead a good while. Before he was of age. I know he wrote that.

Q. Your daughter Harriet A. Remsen can read and write, can she not?

A. I guess so. No; I don't think she can. I don't think she can read writing.

Q. She signs her own name?

A. I don't know.

Q. Where does she live now?

A. She lives out of town. I can't tell you where. They have to send for her whenever she is wanted.

Q. Her name is Harriet Van Zandt?

A. Yes, sir. We had to go hunt her when we first wanted her.

Adjourned until 2 p. m.

2 P. M.

78 Present: Henry R. Edmunds, Esq., examiner; William C. Mayne, Esq., for complainants; Messrs. F. B. Kellogg and John C. Bullitt, Jr., for defendants.

Continuation of cross-examination of ELIZABETH WETZEL.

By Mr. KELLOGG:

Q. You first learned about where this land was you say from a gentleman who came to see you?

A. Yes, sir. I didn't understand then where it was.

Q. You understood this land warrant had been located but there was some land up there that this gentleman wanted you to give some papers for?

A. No, he did not.

Q. What did he want?

A. He told me there was a piece of land there belonging to me, that I had a right to. Didn't I know of it. I said "No, what was there; was there more land been given." He didn't answer the question.

Q. What do you mean by more land been given?

A. I thought more than what the land warrant had been for.

Q. That first land warrant?

A. Yes, sir. I asked the question, and I asked him where it was and he didn't answer me. He said he would intercede. Then he asked me to give him power. He came the second or third time.

79 I told him he was a stranger to me and I was a stranger to him, and I didn't know anything about it, but if there was anything I would see a lawyer about it. Some gentleman and him come one day, and he said he had to go away, but he didn't tell me where it was or no particulars about it.

Q. He wanted you to give him a power?
A. Yes, sir. I didn't do it, and I said I would get somebody here. Then there was a gentleman fetched Mr. Mayne.
Q. When was that?
A. It must have been about three years ago, as far as I know. I don't know. I can't say.
Q. It was in December, was it not?
A. Not right away. I don't know when. I was sick abed at the time.
Q. It was about three years ago?
A. I think it was about that time when this man was there.
Q. Was it in the winter?
A. Yes, sir. Going on towards Christmas. I wouldn't like to say.
Q. Mr. Mayne came with him, did he?
A. No, sir.
Q. Mr. Mayne came by himself?
A. I don't know whether he came the first time by himself. I don't remember.
Q. What did Mr. Mayne say to you about it?
A. Indeed, I don't recollect. My daughter-in-law was there and we just talked about it.
Q. Which daughter-in-law was that?
A. This one here.
Q. What is her name?
80 A. Remsen, my son's wife. She fetched that other man from her house.
Q. She came with that other man?
A. Yes, sir; he came to her house first.
Q. That man's name was Hendrickson, was it not?
A. I don't know. I can't tell you. I never knew his name.
Q. What sort of a looking man was he?
A. Tall slim man. He came with a small man the next time.
Q. Mr. Lehman?
A. I don't know. I can't remember the name. I can't tell you. I was suffering a good deal.
Q. He came with your daughter-in-law first?
A. She fetched him to see me. She knew nothing about this thing.
Q. She is the wife of George W. A. Remsen?
A. Yes, sir. He got their names out of the directory.
Q. You asked him if there was other land besides this land warrant?
A. Yes, sir. I don't know as I said land warrant. I said "Was there other land." I had had a piece and I didn't know whether there was any more or not.
Q. Did you tell him what you did with the piece you had?
A. Yes, sir. I think I did.
Q. You told him you had sold it?
A. Yes, sir. When I asked the question. That is all I know

about it. I can't remember every particular, what he said or what he didn't say.

81 Q. Did you tell him that you had sold the land that you got under the land warrant?

A. Yes, sir. I told him it was sold, and what was this. He didn't tell me.

Q. Did he not tell you it was the same thing?

A. No, sir.

Q. Did he not tell you what the land was?

A. No.

Q. Mr. Mayne told you, did he not?

A. I don't know as he did. He was attending to the rest of them. I don't know whether he did or not. I don't remember.

Q. You say he was attending to the rest of them. Did the rest of the heirs come to see you about it?

A. No, sir. My granddaughter was there one day when he was there, when Mr. Mayne stopped.

Q. What did you say to your granddaughter about it?

A. I just told her there was a man there said there was land, and I didn't know where it was or nothing about it.

Q. When you told this man about this land warrant that you had sold, your granddaughter was present, was she not?

A. No, sir.

Q. Was she not there?

A. No, sir.

Q. You say she came with him?

A. The daughter-in-law.

Q. She heard what you said about the land warrant?

A. I don't know. I was sick in bed.

82 Q. She was present in the room?

A. Yes, sir. She will say whether she was or not.

Q. Did they go into your room where you were?

A. Yes, sir.

Q. Did your daughter-in-law come there too?

A. She didn't live with me. She came in to see me. That is all I know about it. I don't know much about it nohow. I never made any inquiries or never knew what was going on.

Q. What else did you say to Mr. Hendrickson about having sold this land warrant?

A. I didn't say much to him nohow, for he was a stranger to me and I didn't know what he meant.

Q. Afterwards when Mr. Mayne came there you talked the whole matter over, did you not?

A. I don't remember talking much about it.

Q. Mr. Mayne came there in December or January shortly after this?

A. I never have been much among them.

Q. Did not Mr. Mayne come after that?

A. Yes, sir.

Q. He came to see you after that?

A. He came to see me and said this gentleman, I don't know who, told him to call there and see me.

Q. And you talked with him about it?

A. Yes, sir.

Q. Did you tell him you had sold this land warrant?

A. I told him a stranger had been there and told me there was land coming to me. I don't recollect.

83 Q. Did he tell you this was the land under that land warrant Mr. Mayne?

A. I don't remember anything, talking to Mr. Mayne much about it.

Q. Was your daughter-in-law ever there with Mr. Mayne?

A. I don't think she was.

Q. Were any of the other heirs there with Mr. Mayne?

A. I don't recollect. I don't recall of any one being there.

Q. Never from that day to this?

A. I don't recollect whether there were any there or not.

Q. Did not the other gentleman come see you about this?

A. They talked among themselves. Certainly they talked about it, about wondering what it was and they would go and see about it.

Q. And they did see Mr. Mayne?

A. Some of them. I don't know which of them talked to him.

Q. Were there not powers of attorney presented by Mr. Mayne about that time, about three years ago?

A. I can't answer that.

Q. Did not Mr. Mayne ask you to sign a power of attorney?

A. I told him to see about it for me.

Q. He asked you to sign a power of attorney, did he not?

A. I don't remember anything of that kind.

84 Q. Did he not ask you to sign some paper about it?

A. I don't remember him asking me to sign some paper.

Q. You told him to see to it for you?

A. Yes, sir. I don't remember I signed any paper. I don't remember signing any paper. I was so sick I didn't know much about anything when they talked about it. That is the way they all found it out though through that man.

Q. It was about three years ago that Mr. Mayne came to see you about this?

A. I should think it was. I wouldn't like to swear to it, because I don't recollect exactly. I know it was in the cool weather towards Christmas.

Q. And then Mr. Mayne saw the other children about it, did he not?

A. Yes, sir.

Q. And that was along in cold weather about Christmas or January following, was it not?

A. I don't know. I was not down to Mr. Mayne's office, for I was sick that time.

Q. You say you got about $100 for this land warrant; is that true?

A. I suppose so.

Q. That is your recollection?
A. Yes, sir. I can't say I got $100.
Q. Was it not $107?
A. He said there was $107 and he took out whatever there was.
Q. Who took it?
A. The lawyer.
85 Q. What was his name?
A. Mr. Small. He has been dead a good many years now.
Q. He is the one who represented you?
A. He was the one who did my business.
Q. He was the one who got this land warrant for you?
A. Yes, sir.
Q. When you went there to sign this paper you sold it at that time?
A. I don't know when he sold it.
Q. He sold it for you?
A. Yes, sir.
Q. You went there to sign the paper?
A. I went to the squire's and signed the paper.
Q. That was for the purpose of selling it?
A. Yes, sir. I was away. I was not here.
Q. That was for the purpose of selling the land warrant?
A. Yes, sir.
Q. That is the land warrant you said you thought entitled you to one hundred and sixty acres of land?
A. Yes, sir. That is what I heard. I didn't hear whether it was or not, but I thought that was what they were getting.
Q. You supposed that is what you were getting?
A. Certainly.
Q. You went to the lawyer's office to sign this paper to sell it and get the money for it?
A. To the squire's office. I didn't know much about anything those days. I was young.
86 Q. That is what you went there for, to sign this paper?
A. Certainly, I took his advice.
Q. He sold it for you?
A. Yes, sir.
Q. You signed the paper so it could be sold?
A. Certainly, I suppose so. I signed a paper.
Q. He told you you got $107 for it?
A. Yes, sir.
Q. He took out something for expenses?
A. I don't know what he took out.
Q. You said this morning you got about $100.
A. I didn't say I got $100. I said I couldn't say how much.
Q. You got whatever there was less the expenses, did you not?
A. Yes, sir.
Q. And you spent it for the family, did you?
A. I spent it to live on.
Q. You and the children?

A. Yes, sir. The children were all little.
Q. They were living with you?
A. Yes, sir. They were all with me.
Q. You say that Harriet went with you?
A. Yes, sir.
Q. And she signed the paper too?
A. Yes, sir.
Q. You took her from your house right there to the squire's office?
A. I took her with me for company.
Q. From your house?
A. Yes, sir.
87 Q. She was living there with you at that time?
A. She was there that evening. I don't think she was staying home at that time.
Q. Where was she staying?
A. They were boarding at her husband's mother's I think.
Q. She was not married at that time?
A. Yes, sir; she was married then.
Q. What year was she married in?
A. I can't say, but she was married before that.
Q. You are sure of that?
A. That is her name. Her name is not Remsen on the paper. Her name is Heyer.
Q. This is the way you signed it, is it not, "Elizabeth Remsen for myself and as guardian of the minor children of George W. Remsen, deceased"?
A. I didn't hear it read. I didn't hear nothing what was on it.
Q. You signed the paper?
A. I made my mark when the man showed me. He didn't read it.
Q. Harriet signed it as Harriet A. Remsen, did she not?
A. No.
Q. That is the way it appears on the paper, Harriet A. Remsen.
A. I thought she signed it Heyer.
Q. She signed as Harriet A. Remsen?
A. I didn't know.
Q. If she signed it Harriet A. Remsen she was not married?
A. I can't say. I don't know what it means.
88 Q. She signed it as Harriet A. Remsen.
A. I don't think she signed it with that name.
Q. She did.
A. I never knew it.
Q. If she did sign it as Harriet A. Remsen you do not claim she was married then, do you?
A. I can't say. I thought she was married when that was signed.
Q. You may be mistaken. It is a good many years ago. It is signed Harriet A. Remsen. If she signed that name Harriet A. Remsen she was not married?
A. No, but I think it is a mistake somehow.
Q. It is a good many years ago, is it not?

A. I know it is. I don't remember much about it. For I never give such things a thought. It was gone and I thought no more about it, I wouldn't bother with it.

Q. It was gone and you thought you had your money for it?

A. I didn't think so much of that much money. It was not such a great sight.

Q. After it was sold you did not think it belonged to you and paid no attention to it?

A. I wouldn't have paid no attention anyhow if they hadn't given it to me, for I wouldn't have known.

Q. You may be mistaken about Harriet being married at that time. Is not that so?

A. I don't think I am. I don't know what it is doing there Remsen. I can't say. She has got to answer for that herself.

89 Q. You would not say for sure whether she was married at that time or married afterwards?

A. No; I can't say. Because I thought think she was.

By Mr. BULLITT:

Q. What is your age now?

A. I was seventy-eight last July.

Q. Your recollection concerning these events is rather incomplete, is it not, and very dim? Your memory at the present time is somewhat imperfect concerning these old events?

A. I can't recollect numbers and years and dates away back. I have no recollection. I have so much to contend with, with my inward weakness for some years. That is the reason I paid no attention to this.

Q. Your memory then at the present time concerning these transactions——

A. My memory is good. I can call up many things.

Q. You can call up a great many things and other things you forget?

A. Yes, sir. I would not forget, if it is anything that I know that has happened then I can be convinced of what it is. I never expected to have anything to do or bother about it, because I didn't expect to be here. I expected to have been in another country before this time, the way my health has been.

By Mr. KELLOGG:

Q. Your husband was in the Mexican war, was he not?

90 A. Yes, sir.

Q. Was he in the army at the time he died?

A. Yes, sir.

Q. That was in 1847?

A. I don't recollect at all.

Q. About how old was John Wesley Remsen at the time you signed this paper?

A. I don't know. He must have been eight or ten, somewheres along there.

Q. He was older than that, was he not?

A. No, sir.

Q. He was twenty-one years of age in 1858, was he not?

A. I don't know. I don't remember. He could not have been more according to the other children.

Q. Your children knew that your husband was a Mexican soldier, did they not?

A. They all knew he was a Mexican soldier. That was about all they did know.

Q. They all knew when they grew up your husband was in the Mexican war?

A. Yes, sir. They never talked about such things as that.

Q. They talked about his being a soldier?

A. No; just the two little boys, but they were not that way inclined.

Q. They knew your husband was in the Mexican war?

A. They never talked much about it. I never was one to talk to my children about such things.

Q. They knew he was a Mexican soldier?

A. I can't say they all knew.

91 Q. Which ones did know?

A. I don't know. I never heard them talking about it nohow, only when the soldiers came home they went to see them. I took them to a house, a friend of mine up at the corner and looked at them, but I can't say anything about what the children knew. They never talked about it.

Q. You say you took the children to see the soldiers when they came home?

A. The little ones, I took them up to the corner. We only lived in the next street where they passed.

Q. What children did you have at that time; Mary Ann?

A. Mary Ann.

Q. John Wesley?

A. John.

Q. Elizabeth?

A. Yes, sir.

Q. And George?

A. Yes, sir. They were all little bits of things.

Q. John Wesley was a boy about fifteen years old at that time?

A. No; he was not. Mary Ann was older than he, and she was not that. She was not more than fourteen if she was that. She could not have been a bit more, because there came Elizabeth and George. John Wesley was not over ten, if he was that.

Q. After the war you applied for a pension, did you not?

A. Yes, sir.

Q. And also for his pay, did you not?

A. Yes, sir.

92 Q. And then for this land warrant?

A. They got that without asking me anything about that.

Q. They got that for you?

A. Yes, sir.

Q. You knew they got it?

A. Yes, sir.

Q. You talked with your children about these things, did you not?

A. No, sir.

Q. Never said anything about it?

Q. I never talked to any of my children about any such subjects. I never made a practice to do it.

Q. Did you not talk to your children about your property?

A. No, sir. I never considered I had any. I never talked about it. I put my whole soul on raising my family, did the best I could.

Q. Did you not ever tell them about having got a pension?

A. Those that were old enough to know it knew I got money. I never told them.

Q. The older ones heard you got a pension?

A. Certainly.

Q. You say they knew you got money?

A. I never made a practice of telling my children my business.

Q. How did they know you had money?

A. They didn't trouble themselves.

Q. You say they knew you had money?

A. Certainly they knew I had mon-y. I never told them where I got it.

93 Q. You say they knew you got a pension?

A. Some of them did. As they got older they knew I drew a pension.

Q. They knew you got some money from this land warrant?

A. No, sir; they didn't know anything about the land warrant. The children didn't know anything about it. They never heard me talking about it, for I never talked with them. It was just something that had come and went, and there is no attention paid to it.

Q. Harriet can say, I suppose, because she was old enough?

A. I don't know. She never talked about it if she did.

Q. She went with you and signed the paper?

A. Yes, sir. She signed the paper but it was not read to her.

Q. You do not know whether she read it or not?

A. Yes, sir; I knew I stood there and she made her mark.

Q. She signed her name, did she not; she did not make any mark?

A. I don't know what she did. She was standing there.

Q. You just asked her to sign the paper, did you?

A. I spoke to the alderman. I said if she needed to sign the paper. He said he didn't think it was worth while, but she could if she wanted to, and she signed it.

Q. Was that all that was said?

A. Yes, sir.

94 Q. You did not tell her what it was?

A. No, sir; I talked nothing about it.

Q. When you went over with her you say you took her for company?

A. So I did.

Q. Did you not tell her what you were going there for?

A. I told her I was going on business. I was going to start next morning to Delaware, my sister was laying dead and I had other things, and worried about my sister, and I didn't talk about it.

Q. You talked with her about what you were going there for?

A. I was going next day to start down to the country.

Redirect examination.

By Mr. MAYNE:

Q. Do you know this lady? (Mary Jane Remsen.)

A. Yes, sir.

Q. Who is she?

A. My daughter-in-law.

Q. What is her name?

A. Mary Jane Remsen.

Signature waived.

ALFRED J. FORTIN, having been duly affirmed, was examined as follows:

By Mr. MAYNE:

Q. What is your position?

95 A. First assistant clerk in the orphans' court of Philadelphia county.

Q. Have you any records of the estate of George W. Remsen, deceased, in your office?

A. The only record I can find is a petition in the matter of the estate of the minor children of George W. Remsen, deceased, petition for the appointment of a guardian. It was filed on the 6th of October, 1848. It has endorsed on the back "Mrs. Elizabeth Remsen, guardian, without security."

Q. Will you furnish us a certified copy of that record?

A. Yes, sir.

Q. Have you made search of the records of your office subsequent to October 6, 1848?

A. I have.

Q. Can you state whether or not there is any other record or proceeding of any character in reference to the estate of George W. Remsen, deceased, since October 6, 1848?

A. I made a very thorough examination in the indexes to the dockets, and I did not find any record with the exception of the one just produced of any kind or nature.

Cross-examination.

By Mr. KELLOGG:

Q. How long have you been a clerk in that court?

A. Since 1859.

Q. You say you made search for further records in this matter?

96 A. Yes, sir.

Q. I suppose it is not uncommon that papers in connection with old estates in forties, 1849 and 1850 are lost?

A. The original paper may be lost, but there is always a docket entry showing some paper having been filed. The docket itself shows the record of the filing.

Q. This is only the paper itself. You have not produced the docket?

A. No, sir. The docket just merely states what is on that paper.

Q. It is customary to enter these papers in a docket, is it?

A. To make an extract of it on the docket; yes, sir.

Q. Then the papers are filed away?

A. Yes, sir.

Q. You cannot say whether there were any other papers in this case or not; you do not know of your own knowledge anything about it?

A. No. I only know from searching the index and the docket.

Q. You have not found any other papers?

A. None at all. Either in the name of the minors or in the name of the decedent or the guardian. I searched all the names.

By Mr. MAYNE:

Q. Will you produce the docket?

A. Yes, sir. It is a great big book. I can bring it if you want me to bring it down.

97 Production of the docket waived. Certified copy under the acts of Congress of all abstracts pertaining to this case to be furnished.

If Mr. Bullitt upon his arrival desires to ask any further questions on cross-examination the witness will be called.

Signature waived.

SAMUEL COLEMAN, having been duly sworn, was examined as follows:

By Mr. MAYNE:

Q. Where do you reside?

A. I live at 1838 North Thirteenth street, Philadelphia.

Q. Do you know this lady? (Pointing to Mrs. Elizabeth Wetzel.)

A. Yes, sir. She is a sister-in-law of mine.

Q. How long have you known her?

A. That is going back a great ways. Fifty-seven years, or maybe a little longer.

Q. Did you know her as a maiden lady?

A. Yes, sir.

Q. What was her maiden name?

A. Hopkins.

Q. What was her first name?

A. Elizabeth.

Q. Were you acquainted with George W. Remsen?

A. That is the son.

Q. Do you know Mr. George W. Remsen?
A. I knew him when he was here in town. I have not seen him for a number of years.
98 Q. Who was he?
A. He was a son of hers.
Q. Did you know another George W. Remsen?
A. I only knew the one. I didn't know his name by George W. I knew it George. I knew no middle names.
Q. You married this lady's sister, did you?
A. Yes, sir.
Q. Do you know who this lady (Mrs. Wetzel) married?
A. She married George Remsen.
Q. Were you at the marriage?
A. No, sir.

Counsel for defendant- will move at the time of the trial that the testimony of this witness with reference to the marriage will be stricken out on the ground it is hearsay and incompetent.

Q. Did you ever visit this lady (Mrs. Wetzel) after her marriage?
A. No, sir. She visited at our house but I never visited at their house.
Q. Did she ever come in company with Mr. Remsen?
A. No, sir; not to my knowledge.
Q. She never came there with Mr. Remsen?
A. Not to my knowledge. I don't recollect anything of that kind. I was away pretty much all the time through the day and I don't know hardly who was there and who was not. All my time was taken up out of doors.
Q. Is this George Remsen living?
A. That is more than I can tell you.
99 Q. I mean the one that you say married this lady.

Defendants' counsel object to the testimony as incompetent, the witness having said that he never knew but one George Remsen, and that was the son of the lady present.

Q. Did you know whether or not this lady ever married?
A. Not any more than their living together. That is all I know.
Q. Living together with whom?
A. George Remsen and her.
Q. The other George Remsen that you referred to, who was he?
A. That is the son.

Cross-examination.

By Mr. KELLOGG:

Q. You say you never knew but one George Remsen?
A. I knew her husband, or the one she lived with, her husband of course, I was not at the marriage, and the son. That is the only two I ever knew.
Q. You have seen her husband Remsen?

A. Yes, sir; I saw her husband several times.
Q. Where were they living?
A. I don't know. I can't say, hardly, where they lived.
Q. In what city?
A. In the city of Philadelphia.
Q. You were not at the marriage?
A. No, sir.
Q. Were you ever at their house?
100 A. No, sir.
Q. Was he ever at your house?
A. I don't know. That I can't tell you. I was away all through the day. In the daytime I was away altogether. Night-time I was generally about home, but I don't recollect of ever knowing him to come to the house. He may have been to the house for what I know.
Q. You never were at their house when they were living together?
A. No, sir.
Q. All you know about their living together is what somebody told you, is it?
A. I have seen the children of course. They came backwards and forwards to the house.
Q. What years was this?
A. That is more than I can tell you. It has been a good many years ago.
Q. What year do you first remember of seeing George W. Remsen, the one you claim to be her first husband?
A. I can't tell you exactly the years. It must be fifty-five years ago, if not more.
Q. That would be 1837.
A. Yes, sir.
Q. Before that did you know him?
A. I can't say. I can't recollect the dates.
Q. You say you knew her son, George W. A. Remsen?
A. I don't know what his middle name was. I knew her son George.
Q. How many years since you have seen him?
101 A. I guess that was in about 1862. Between 1862 and 1865, as near as I can come to it.
Q. That is the last you saw of him?
A. That is the last I saw of him.
Q. Do you know where he is now?
A. I couldn't tell you anything about him. The last I knew of him I met him at the navy yard in Philadelphia. We had a talk together there. He was then in business for himself. We had a talk there. That was the last I ever saw of him.

(Reserving the right to further cross-examination by Mr. Bullitt, counsel agreeing to reproduce the witness at any time that counsel for defendant wants him, the cross-examination is closed.)

By Mr. MAYNE:

Q. Do you know what ever became of George W., the son?
A. No, sir. I never saw him from the time I met him at the navy yard.

Signature waived.

GEORGE W. F. GRAFF, having been duly affirmed, was examined as follows:

By Mr. MAYNE:

Q. Where do you reside?
A. 324 New street, Philadelphia.
Q. What is your profession or calling?
A. Minister of St. George's Methodist Episcopal church.
102 Q. How long have you been stationed there?
A. Since March, 1891.
Q. Have you any record of the marriages celebrated by the ministers of that church?
A. I have them all.
Q. Where is the record kept?
A. In the vault of the church.
Q. Where did you get the book you have in your hand?
A. From the vault of the church.
Q. Please refer to that book. Is there any record there of the celebration of the marriage of George W. Remsen and Elizabeth Hopkins?

Objected to as book is the best evidence.

A. I have the book here. (Referring to book.) There is a record of the marriage of George Remsen and Elizabeth Hopkins, May 19, 1830, by Reverend Maning Force. This is the book.
Q. Have you any objection to that book being taken to St. Paul?
A. Yes, sir.
Q. Look at this paper and tell me what that contains.

Objected to witness stating the contents of paper as incompetent.

Q. Is your signature attached to that paper?
A. Yes, sir.
Q. Is the handwriting there in your own proper handwriting?
A. Yes, sir.
Q. The references there were taken from what?

Objected to as incompetent.

103 A. Taken from the original record of St. George's Methodist Episcopal church concerning the marriage of George Remsen to Elizabeth Hopkins.

Paper offered in evidence.
Objected to as incompetent.
Paper produced marked "No. 5, H. R. E."

Cross-examination.

By Mr. KELLOGG:

Q. When did you first see this record that has been introduced in evidence?
A. Do you mean the book or just that particular record?
Q. That particular record and the book.
A. The day that the record was made.
Q. Were you present at that marriage?
A. I do not mean the record in the book. I mean the day I made the record.
Q. Tell me the day you first saw this book and the entry in there that you have testified about.
A. You mean as far as the particular case is concerned?
Q. When did you first see this book?
A. Some months after I was stationed there.
Q. When was that?
A. I was stationed there in March, 1891.
Q. That was the first time you ever saw the book?
A. Yes, sir.

Page of book containing the record referred to marked Exhibit "6" for identification.

104 The WITNESS: This is the only and original record of the marriages in that church between 1816 and 1845.

By Mr. MAYNE:

Q. To whom does that record belong?
A. To the church.
Q. Is the church incorporated?
A. Yes, sir.

By Mr. KELLOGG:

Q. You do not know that that is an original record. You do not know when these entries were made or anything about it?
A. To the best of my knowledge and belief it is the original record.
Q. You do not know anything about it personally of your own knowledge?
A. No, sir.
Q. You do not know when these entries were made?
A. No, sir.
Q. You do not know but what that book may be a copy of another book?
A. No, sir; as far as my knowledge goes. I believe it to be an original record.
Q. You yourself do not know anything about whether that is an original record or not or whether that is copied from some other book, do you? Do you know of your own knowledge?
A. This book is placed in my hands as the original record of marriages between those dates.

Q. Who told you they were the original records?
A. My board of trustees placed them in my hands as the original record.
105 Q. You know the difference between hearsay and your own knowledge?
A. Certainly.
Q. All you know about it is what somebody told you?
A. Yes, sir.
Q. You do not know of your own knowledge whether that is an original record or not, do you?
A. No, sir. I believe it to be.

Signature waived.

It is agreed between counsel that this testimony may be taken by stenographer, three copies made, one for the defendant-, one for the complainants, and original for the examiner, and the expenses to be taxed as costs in the case.

Adjourned until Monday, December 19, 1892, 9.30 a. m.

MONDAY, *December* 19, 1892—9.30 a. m.

Present: Henry R. Edmunds, Esq., examiner; William C. Mayne, Esq., for plaintiffs; Messrs. Porter, Kellogg and Bullitt for defendants.

MARY J. REMSEN, the witness who was recognized by Mrs. Wetzel as her daughter-in-law, having been duly sworn, was examined as follows:

By Mr. MAYNE:

106 Q. Where do you reside?
A. 2504 Howard street, Philadelphia, Pennsylvania.
Q. How old are you?
A. I am in my forty-eighth year.
Q. When were you born?
A. I was born the 18th of August, 1845.
Q. Mrs. Wetzel identified you as one of her daughters-in-law?
A. Yes, sir.
Q. Were you married to one of her sons?
A. Yes, sir.
Q. Which one?
A. George W. A.
Q. When?
A. On the 19th of June, 1864.
Q. Is your husband still living?
A. I don't know. I don't think he is.
Q. When did you last see him or hear from him?
A. The last time I saw him was on the 30th of May, 1871.
Q. Where?
A. In Philadelphia.
Q. When did you hear from him after that?
A. I couldn't give you the dates, but the last I heard from him was about three months after that, after he went away.
Q. How do you fix that time?

A. I know by my youngest child's age. It was about three months old.

Q. Which child is that?

A. That is Mabel.

107 Q. When was she born?

A. The 28th of May, 1871.

Q. Where did you hear from your husband at this time?

A. He was in Washington at the time I heard from him. I received a telegram saying that he would be home in two weeks.

Q. Washington, District of Columbia?

A. Yes, sir.

Q. You have never heard from him since then?

A. No, sir.

Q. You have no knowledge of any character where he went to after he left you?

A. No, sir. I wrote where he told me to write and all my letters were returned unanswered.

Q. Where did he tell you to write?

A. To Des Moines, Iowa, post-office. I always put on the back of my letters to return in so many days unless called for, and they were all returned.

Q. Where were you married?

A. I was married at Sanctuary parsonage in Philadelphia on Fifth street.

Q. When?

A. On the 19th of June, 1864.

Q. Have you any other children besides Mabel?

A. Yes, sir; three others.

Q. What are their names?

A. The first one was Anna E. She was born 24th of March, 1865. She is not living. She died August 18, 1865. The next was George W. He was born July 2, 1866. He is still living.

108 He is living on Bouvier street, 2317, I believe is the number. He is married.

Q. Whom did he marry?

A. Sallie Shaw. I can't remember the date of his marriage.

Q. Were you present at his marriage?

A. Yes, sir; I was present at his marriage, but I can't remember the date.

Q. Where was he married?

A. He was married in the Church of Incarnation. I think that is Eighteenth and Jefferson. I never was in the church but once, and I can't remember just where it is.

Q. Do you know about the year he was married?

A. I think he was married in February. I think next February will be five years. I think it was the 8th of February.

Q. Were you present at the marriage of Mr. and Mrs. Beckman?

A. No, sir.

Q. Do you know when they were married?

A. I remember, but I don't remember the year or anything about

it, but I remember the circumstances. I couldn't tell you any dates at all. I know where they were married.

Q. Were you present at the marriage of Mr. and Mrs. Hergesheimer?

A. No, sir.

Q. Do you know when they were married?

A. No, sir; I don't know any dates. I was to see them a few days afterwards, but I couldn't tell the date at all.

109 Q. Were you present at the marriage of John Wesley Remsen?

A. No, sir; he was married before I was.

Q. Have you been introduced to his wife?

A. Yes, sir.

Q. What is her name?

A. Her name was Martha Moore.

Q. You have seen the Bible that was offered in evidence here, have you not?

A. Yes, sir.

Q. Are you familiar with the entries in that Bible as to births, marriages and deaths?

A. I have seen them all. I entered some of them myself.

Q. When did you first see those entries in the Bible?

A. When I was first married the first entries were made in. All that my husband made were made at the time I was married.

Q. Was your mother-in-law married to Mr. Wetzel at the time of your marriage?

A. No, I don't think she was. I think she was married a few days after I was married. It was a very few days I think.

Q. Where was your mother-in-law living at that time?

A. She was living on Marlborough street Philadelphia.

Q. Were any of her children living with her at that time?

A. Only my husband.

Q. Are you acquainted with Harriet A. Van Zant?

110 A. Yes, sir.

Q. Were you present at her marriage with Jacob Heyer?

A. No, sir. She was married before I knew her. Before I knew the family.

Q. Did you ever meet Mr. Heyer?

A. No, sir.

Q. Had you ever heard of the marriage in the family of Jacob Heyer to Harriet A.?

Q. Yes, sir.

Q. Mrs. Wetzel, your mother-in-law, in her testimony made some reference to a gentleman by the name of Hendrickson and a gentleman by the name — Mr. Lehman coming with you up to see her?

A. Yes, sir.

Q. Was that true?

A. Yes, sir.

Q. What was the nature of their business with you?

A. They came on to look for the heirs of George W. Remsen, who died in the Mexican war.

Q. Did they tell you what claim the heirs had?
A. No, sir. They didn't give me any information at all, only there was land out there that belonged to those heirs.
Q. What did he want you people to do, if anything?
A. He wanted us to give him a power of attorney.
Q. Did you give it to him?
A. No, sir.
111 Q. Have you any knowledge when you first met me?
A. No, sir; I haven't. I didn't make any date of it.
Q. I did disclose to you, did I not, the location of the land, the subject of this suit?
A. Yes, sir.
Q. That disclosure was made when?
A. In August, 1891.
Q. Prior to that had you known anything about this land?
A. No, sir; only what this Mr. Hendrickson told us.

Mr. MAYNE: I reserve the right to interrogate this witness on the entries in the Bible as soon as we get possession of it.

Cross-examination.

By Mr. KELLOGG:

Q. Mr. Lehman and Mr. Hendrickson came to see you, did they?
A. Mr. Hendrickson came to see me.
Q. Did Mr. Lehman come to see you afterwards?
A. No, sir.
Q. Did you ever see Mr. Lehman?
A. Yes, sir. I met him at my mother-in-law's the first time.
Q. How long after Mr. Hendrickson was there did you see Mr. Lehman?
A. It was not very long afterwards. I could not give you the date. It was inside of a month.
Q. Was it not three years ago this month?
112 A. I couldn't remember the date. I didn't make any date of it at all.
Q. It was several years ago, was it?
A. It has been over two years ago since Mr. Hendrickson came on. I could not fix any date.
Q. As a matter of fact, you recollect it was in December about three years ago?
A. I could not remember the month. I know it was over two years ago. I don't remember how much. It was between two and three since we first heard or saw Mr. Hendrickson.
Q. He came to your house?
A. Yes, sir.
Q. Where were you then living?
A. 2504 Howard.
Q. How long had you lived there?
A. We have lived there six years last October.

Q. You went with him to your mother-in-law's?
A. No; I met him at my mother-in-law's.
Q. By appointment?
A. Yes, sir. I gave him her address and went over. I don't suppose I went there by appointment. I went over and he was there.
Q. Your mother-in-law said you were present at her interview with Mr. Hendrickson?
A. Yes, sir.
Q. That is the fact?
A. Yes, sir.
Q. You heard their conversation?
A. Yes, sir.

Q. You heard your mother-in-law state, as she testified yes-
113 terday, that the only land warrant she ever knew she had was one that she sold, a Mexican land warrant?

A. Yes, sir.
Q. You heard that?
A. Yes, sir.
Q. And he said that she had some land up in Minnesota, did he not?
A. I wouldn't be sure what State, but he said it was in the West.
Q. It was in St. Paul, was it not?
A. No, sir; he didn't say St. Paul.
Q. Did he not say where he came from?
A. I think he said he came from St. Paul.
Q. He wanted Mrs. Wetzel to sign a power of attorney, did he?
A. Yes, sir.
Q. Did he have it drawn?
A. I do not think so.
Q. Who did he want appointed the grantee in the power?
A. He didn't say that I remember.
Q. Mrs. Wetzel told him she never knew of having any land or land warrant except this one Mexican land warrant?
A. Yes, sir.
Q. And that she had sold that a good many years ago?
A. Yes, sir.
Q. And that was a warrant coming to herself and children because of the services of her husband in the Mexican war.
A. Yes, sir.

114 Q. She told him that?
A. Yes, sir.

Q. She told him her husband died in the Mexican war, did she not?
A. Yes, sir.
Q. She told him she sold that warrant a great many years ago, did she not?
A. Yes, sir.
Q. Did she not tell him that the business was done by one Gen. Small?

A. Yes, sir.

Q. And that she went to his office and signed the papers to sell the warrant?

A. I don't remember where she said she signed them, but she said she signed the papers.

Q. You knew that Mr. George W. Remsen, the father of these children, was a Mexican soldier, did you not?

A. Yes, sir.

Q. How many years have you known that?

A. I cannot tell you how long. Some time after I was married. I could not tell you how long.

Q. From whom did you learn that?

A. I suppose from my mother-in-law or husband, I couldn't tell you which.

Q. Your husband knew it?

A. I suppose he knew his father was a soldier.

Q. You have heard him talk about his father being in the Mexican war?

115 A. I never heard him talk much about his father, for he was very young when his father died. His mother said more than he did. He very seldom ever spoke about it.

Q. Did he ever speak about it?

A. I suppose he has.

Q. You have heard it discussed in the family, have you, that he was a Mexican soldier?

A. Yes, sir; I have heard it spoken of.

Q. Did Mrs. Remsen also state to Mr. Hendrickson at that time that she got this lawyer to get her the pay of her husband from the Government?

A. I could not remember that.

Q. And that she got a pension?

A. Yes, sir. I knew she got a pension from the Government. She was drawing it when I was married.

Q. And from whom did you learn that?

A. I learned it from her.

Q. Did you live with her in the same house after you were married?

A. Yes, sir; for a short time.

Q. About how long?

A. I should not think over a couple of months.

Q. You knew then she had a pension from the Government?

A. Yes, sir. She didn't have it long after I was married; she gave it up right after. She was married soon after I was.

Q. Did she also state to Mr. Hendrickson that Harriet A. Remsen had gone with her and signed this paper at Gen. Small's?

A. I could not remember that.

116 Q. You say you saw Mr. Lehman shortly after Mr. Hendrickson was here?

A. Yes, sir.

Q. He came to see you?

A. No; he didn't come to see me. I saw him at my mother-in-law's.

Q. You had a meeting there?

A. I knew Mr. Hendrickson was going over to see my mother-in-law and I thought I would go over *over* too.

Q. You saw him there?

A. Yes, sir.

Q. It was while Mr. Hendrickson was there?

A. Yes, sir.

Q. Did you see Mr. Lehman after that?

A. I did see him after, but a good while afterward I believe I saw him.

Q. How long after that did you see Mr. Mayne?

A. I couldn't tell that for I didn't make any date.

Q. About; within a month, was it not?

A. No, sir; I don't think so. I couldn't remember that.

Q. You saw Mr. Mayne in December, 1889, did you not?

A. I couldn't be positive about that.

Q. If Mr. Mayne wrote to St. Paul that he saw you and talked with you about this matter in December, 1889, you would say that was true, would you not?

A. I couldn't say because I didn't make any date of it.

Q. You would not deny it, would you?

117 A. I don't know. I couldn't say it positively when I don't know.

Q. You saw him not a great while from the time you saw Mr. Hendrickson?

A. I couldn't tell you how long.

Q. Not a great while? You certainly have some idea?

A. I haven't any idea for I didn't make any note of it.

Q. Was it the same winter?

A. I think it was.

Q. When you saw Mr. Mayne he talked with you about this, did he not?

A. I am trying to think where I saw Mr. Mayne. Of course he talked with us about this matter when we saw him.

Q. When you first saw him he talked to you about it?

A. Yes, sir.

Q. He told you what the nature of this claim was did he not?

A. No, sir.

Q. He did not tell you?

A. No, sir. I don't think he knew much about it himself then because we could not get any information. I couldn't get any from Mr. Hendrickson.

Q. Mr. Hendrickson told you it was a claim about land that was located with a land warrant?

A. He told me it was land. I asked him where it was, and he said he couldn't tell me, that the counsel out there told him not to tell. I told him, "Then you could not expect us to go into this."

118 Q. He told you it was a land located with the land warrant?
A. Yes, sir.
Q. With a land warrant that once belonged to the heirs of George W. Remsen?
A. He said from him, a soldier—soldier's land I suppose.
Q. And that the land was located by a warrant that came from the heirs of George W. Remsen. He told you that, did he not?
A. I believe he did.
Q. By virtue of George W. Remsen being in the Mexican war. He told you that?
A. Yes, sir.
Q. He told you he thought there was a defect in the title and that it could be got for the heirs? He said there was a claim there?
A. He said it was claimed for the heirs.
Q. By virtue of the assignment of this land warrant?
A. I can't tell you about that.
Q. It was about the land warrant?
A. Yes, sir.
Q. He discussed the land warrant over?
A. He didn't give me much information about it.
Q. It was mentioned between him and your mother-in-law?
A. Yes, sir.
Q. She told him that the land warrant was issued to her and her children, did she not?
119 A. I don't remember anything about the children. She said she got the land warrant. That is all I can remember.
Q. Did you see any of the other heirs about that same time?
A. When Mr. Hendrickson was there?
Q. Shortly after.
A. I suppose I did. I suppose we talked it over.
Q. Whom did you see?
A. I suppose I saw all of those who are concerned in this.
Q. You saw Mrs. Harriet A. Van Zandt?
A. No; I didn't see her.
Q. You saw John Wesley Remsen?
A. No, sir; I didn't see him. Not for some time afterwards, for he lives in Maryland.
Q. You saw your own children?
A. Yes, sir.
Q. You told them of this conversation that you had at Mrs. Wetzel's in the presence of Mr. Hendrickson?
A. Yes, sir.
Q. You say the first time you learned where this land was was in August, 1891?
A. Yes, sir.
Q. It is a fact that at Mrs. Wetzel's that day you did not learn it?
A. I didn't learn it there.
Q. No more than you knew before?
A. Not much more. I don't think I learned any more.

120 Q. These facts about this land warrant you had known before, but you did not know where it was located?
A. I didn't know it until Hendrickson told me about it.
Q. In fact you say you did not learn any more than you learned before?
A. No; I don't think I learned any more that day. Very little more.
Q. How many years have you known the fact that Mrs. Wetzel had a land warrant and sold it?
A. I never knew anything about it until I learned it from Mr. Hendrickson that day.
Q. How many years had you known not that this was located land up there, but that she had sold a land warrant?
A. I didn't know it until after Mr. Hendrickson came on.
Q. I thought you said you did not learn any more there?
A. I learned it there.
Q. I thought you said you did not learn any more there than you knew before?
A. I meant more than I knew after I saw Mr. Hendrickson. I didn't know anything until I saw him.
Q. Mrs. 'Vetzel told him these facts in your presence?
A. They were talking it over but I didn't pay very much attention to them.
Q. You heard it?
A. I heard them.
Q. You talked to your children about it?
121 A. I told them what was said; yes, sir.
Q. Then all you ever knew before that was that Mr. George W. Remsen, the deceased, was in the Mexican war? You knew that?
A. Yes, sir.
Q. And that Mrs. Wetzel got a pension?
A. Yes, sir.
Q. And that she got her back pay?
A. I don't remember anything about that.
Q. You never knew this land warrant was located until Mr. Hendrickson told you?
A. No I didn't know anything about it.
Q. You say you did not see John Wesley or Harriet A. Whom else did you see shortly after that?
A. I saw Mrs. Beckman and Mrs. Hergesheimer.
Q. They are daughters of whom?
A. Of Mary Ann Remsen, deceased.
Q. Has Harriet A. got any children?
A. Yes, sir; two. Frank and Annie.
Q. Did you see them?
A. I didn't see them then; no.
Q. You saw Mrs. Beckman and Mrs. Hergesheimer?
A. Yes, sir.
Q. Did you talk to them about what you heard?
A. Yes, sir.

Q. How long after Mr. Hendrickson was here was that?
A. I guess that was not very long. That was a short time.
Q. You told them the same as you told your children?
122 A. Yes, sir.
Q. You told them what conversation occurred in the presence of Mr. Hendrickson at Mrs. Wetzel's?
A. I couldn't remember much of the conversation.
Q. You told them of the substance, about the claim of this land warrant?
A. Yes, sir.
Q. It was generally known in the family that Mr. George W. Remsen died in the Mexican war?
A. Yes, sir.
Q. And that his widow received a pension?
A. Yes, sir.
Q. And a bounty?
A. I don't know anything about the bounty. I heard nothing about that.
Q. You heard that she received one hundred and some dollars from the sale?
A. No, sir; I never heard it.
Q. Mrs. Wetzel stated that the children generally knew that she received this money?
A. I never heard it.
Q. Your husband knew?
A. I never heard him talk about it.
Q. You never heard it?
A. No, sir.
Q. You have heard him talk about his being a Mexican soldier?
A. Yes, sir. I knew she drew a pension.
Q. How many years ago did you first know Mrs. Wetzel?
A. A few months before I was married.
123 Q. How long after you were married did you live there?
A. It was not long. I don't suppose over two months. I couldn't be exact about that.
Q. When did you get Mr. Mayne to look after your interests in this case?
A. I couldn't remember that.
Q. About how long?
A. I can't tell you. I didn't make any date of it.
Q. You made a date of this August, 1891, did you not?
A. I know because we had a meeting at his office then.
Q. He told you to keep particular account of that, did he not?
A. No, sir.
Q. How many times have you talked with him about this?
A. I couldn't tell you.
Q. Many times?
A. No, sir; not often, because I hadn't seen him very often.
Q. You talked with him about what you should testify here?
A. No, sir. I couldn't tell the day of the month, but I know the month.

Q. How long before that was it you had Mr. Mayne look after your interests?

A. I couldn't tell you. It might have been—there is no use trying to tell you the date or length of time because I couldn't do it.

Q. You had him look it up some time before that?

124 A. Yes, sir.

Q. How long before?

A. I couldn't tell you.

Q. A year?

A. No; I don't think it was that long. If I would tell you I couldn't tell you the truth because I haven't any date.

Q. Suppose Mr. Hendrickson was here in December, 1889?

A. Was he here in December?

Q. He was here in December, 1889. We will take it for granted he was here in December, 1889. If that is the case you saw Mr. Mayne shortly after that, did you not?

A. I couldn't tell you how soon.

Q. In that same winter you saw him, did you not?

A. I couldn't be positive about it.

Q. How long after Mr. Hendrickson was here did you employ Mr. Mayne to look after these matters for the heirs?

A. I couldn't tell you how long. It may have been several months afterwards. I could not be positive about that.

Q. Might it have been more than a month?

A. Of course it might have been.

Q. About how long do you think?

A. I could not tell you how long.

Q. Two or three months?

A. It seems to me longer than that. I would not be positive about that.

Q. Six months?

A. It might have been.

125 Q. And longer do you think?

A. I couldn't tell you.

By Mr. BULLITT:

Q. From the time you saw Mr. Hendrickson up to the meeting that you had in Mr. Mayne's office in August, 1891, you had been engaged with the other heirs in consultation, etc., with Mr. Mayne concerning this land claim, had you not?

A. Yes, sir; I think we had.

Q. Then in August, 1891, you met by appointment at Mr. Mayne's office to map out some plan of procedure?

A. Yes, sir.

Q. Who was present at that meeting besides yourself?

A. I remember my son was there and my youngest daughter and Mrs. Beckman and Mrs. Hergesheimer.

Q. Was Mrs. Wetzel there?

A. No, sir.

Q. Was Mrs. Harriet Van Zandt there?

A. No, sir.

Q. Do you know why neither of them were there?
A. Mrs. Wetzel is not able to go out.
Q. She knew the meeting was to be held there?
A. I don't think she did.
Q. Why was Mrs. Van Zandt not there?
A. I couldn't tell you.
Q. Do you know whether she knew that the meeting was to be held?

A. I don't think she did.

126 Q. When Mr. Hendrickson was here and you saw him did he want a share of the property in case he got it for the heirs?

A. I don't think so. I don't think there was anything like that mentioned.
Q. Did he say anything about it at all?
A. No, sir.
Q. You say he wanted to get the heirs to sign a power of attorney?
A. Yes, sir; that is what he told me.
Q. Do you know what sort of power of attorney he wanted them to sign?
A. No, sir. He didn't say anything about it.
Q. As a matter of fact, the heirs of Mrs. Wetzel made no agreement with Mr. Hendrickson at all?
A. No, sir; because we didn't get any information. He would not give us any information at all. I told him I thought it was strange to come on here and want us to give him a power of attorney and he would not give us any information.

By Mr. KELLOGG:

Q. Is it not a fact Mr. Hendrickson told you just where this land was and offered to take the case and work it up?
A. No, sir. He wouldn't tell us where it was.
Q. Did not Mrs. Wetzel say she wanted to consult a lawyer?
A. No, he proposed that himself; Mr. Hendrickson did. He said "Of course if we choose to, we could have counsel on our side."
Q. As a matter of fact, Mr. Mayne was consulted while he was in the city?

127 A. I can't say whether it was while he was in the city or not.

Q. It was within a few days after?
A. I couldn't tell.
Q. Your memory is not as faulty as you ask us to believe. Is it not a fact that Mrs. Wetzel objected and that she did consult a lawyer?
A. I said I thought we ought to find something about it.
Q. You did see Mr. Mayne within a few days?
A. I don't think so.
Q. It was within a month, was it not?
A. I can't tell you.
Q. Will you swear you did not see him within a month?

A. I would not swear at all, because I can't tell you whether it was a month or two or three months. I could not fix the date at all. I am not going to tell you lies. If I would tell you anything like that I should. I can't be positive about a thing I don't remember.

Q. During all of your married life you have lived in Philadelphia, have you?

A. No, sir.

Q. How many years have you lived away from here?

A. I should judge about five years. I would not be positive about that.

Q. Since you were married to Mr. Remsen you have lived away about five years?

A. Yes, sir.

Q. The rest of the time where have you lived?

128 A. In Philadelphia.

Q. You say you were married in 1864 and your husband went away in 1871?

A. Yes, sir.

Q. During that seven years where did you live?

A. I lived in Millsborough, Delaware, a year.

Q. That is where Mr. John Wesley Remsen lived?

A. No; he lives in Federalsburgh, Maryland.

Q. Is that where any of these heirs lived?

A. No, sir. I lived in Lincoln, Delaware, a year and I lived in Stockton—I don't know whether I lived there two years or not. The rest of the time in Philadelphia.

Q. That would make about four years in Philadelphia after you were married. During that time how far did you live from where Mrs. Wetzel, your mother-in-law, lived?

A. Mrs. Wetzel lived with me most of the time. No; I don't think that four years. She lived with me while I was away in the country, while I was in Delaware and Maryland. In the city I don't think she did live with me much of the time.

Q. When you were away in the country she lived with you?

A. Yes, sir.

Q. She went with you?

A. Yes, sir.

Q. At these three places where you went?

A. Yes, sir.

Q. While you were in Philadelphia she lived with you part of the time?

129 A. Yes, sir.

Q. A good share of the time?

A. Those first four years I couldn't be positive, but since then she has. I should judge she lived with me for nearly twenty years.

Q. You have been very intimate with her?

A. Yes, sir.

Q. And of course have talked with her a great deal?

A. Yes, sir.

Q. About her first husband, and the second, and her life generally?

A. Yes, sir; I knew her second husband.

Q. And talked with her about her first husband?

A. Yes, sir; some time.

Q. And her children?

A. Yes, sir.

Q. And her means of livelihood when she had any?

A. Yes, sir. When she had him she never said anything about her first husband's affairs.

Q. She never said a word about her first husband's affairs?

A. Very little.

Q. She talked to you about it?

A. Very little.

Q. And the circumstances of his death?

A. She told me he died in the Mexican war and having a hard time getting along with the children, etc.

Q. She stated it was generally known to her children that
130 she received his back pay and a pension and this money from the sale of this bounty land warrant?

A. I don't know anything about that.

Q. It is a fact that that was generally known, was it not, that she received a certain amount of money?

A. I never heard that. I know she got a pension. Outside of that I don't know anything about it.

Q. Did you ever know Gen. Small?

A. No, sir.

Q. You have heard her speak of him?

A. I have heard her speak about him settling her business, attending to her business, attending to this pension. I paid very little attention to it.

Q. He lived in Philadelphia, did he not?

A. No, sir.

Q. You knew that she said he settled her business?

A. She was very intimate with his family. I believe she told me she used to visit there.

Q. And that he settled the business of her first husband in connection with her pension and other matters?

A. She mentioned him in connection with some business. She didn't tell me anything definite about it, only she mentioned his name.

Q. She was the guardian of the young children?

A. I don't know anything about it.

Q. Did you ever hear her say anything about it?

A. I think I have. At the time Mr. Hendrickson was there I think she said she was appointed guardian.

131 Q. At the time Mr. Hendrickson was there she said she was guardian of some of the children?

A. I don't know about that. I heard her say she was appointed guardian of some of the children.

Q. Did you ever hear that before?

A. No, sir; not before that day. That was the first I heard about it. She never talked her business over to me.

Signature waived.

MARY J. REMSEN recalled.

By Mr. MAYNE:

Q. (Exhibit 3, 12–17–'92 H. R. E., Bible, handed witness.) When did you first come in possession of that Bible?

A. It was my husband's Bible. He had it when I married him.

Q. Has it been in your custody and under your control ever since?

A. Yes, sir.

Q. Are you familiar with the handwriting in the records there, marriages, births and deaths?

A. I am familiar with this entry on page one, certificate that George A. Remsen and Mary A. Derbeshier were united in holy bonds of matrimony, is in my handwriting.

Q. The certification as to the marriage of George A. Remsen and Elizabeth Hopkins on page one, in whose handwriting is that? (Referring to page one.)

A. That looks like my husband's.

132 Q. Was it there when you first received it?

A. Yes, sir.

Q. As to the record on page two of the birth of George W. Remsen. Do you know in whose handwriting that was?

A. Those look like my husband's handwriting. All those were in when I was married.

Q. Were those entries in the book in the way they are now when you received it?

A. Yes, sir.

Q. As to the entries on the third page, in whose handwriting are those?

A. Those are in my handwriting. I made those entries on the third page.

Q. As to the entries on the fourth page. In whose handwriting are those?

A. I think the last two on page four are mine. They look like it. The other two look like my husband's handwriting.

Q. Turn back to page one, the certification of your marriage to George W. A. Remsen. When did you enter that in that book?

A. I couldn't remember that.

Q. About when?

A. I could not remember.

Q. Has it been in there a long or short time?

A. A long while. I don't suppose it was very long after I was married. They were all entered during the year. They were entered according to their births.

Q. As to the births of your children. Those entries were made by you at about what time?

133 A. After they were born some time, each of them.

Q. A short or long time after they were born?

A. I think it was a short time. Mabel's was not. Mabel's was not for over two years, for it was two years before she was named.

Q. As to the entries of deaths on page four, those entries that are in your handwriting, when were they made?

A. I could not remember.

Q. Have you made any entries in that book recently?

A. No, sir.

Q. For how many years?

A. I guess for nineteen years anyway. I made the last one, that is Mabel's. I know she was two years old when she was named and I made it soon after.

Q. Were any of those entries made in that book after you had any knowledge of the controversy the subject of this suit?

A. No, sir.

Cross-examination.

By Mr. KELLOGG:

Q. (Page 2 shown witness.) In whose handwriting did you say the entries on page 2 were?

A. They look like my husband's handwriting.

Q. Can you say whether they were made by him or not?

A. I believe they were. I didn't see him make them.

134 Q. How many years is it since you have seen your husband's handwriting?

A. It has been over twenty-one years.

Q. You may be mistaken as to that?

A. I might be, but I always understood that he made those. It looks like his handwriting.

Q. Can you tell positively?

A. I couldn't swear to his handwriting, it has been so long since I saw any of it. I know those entries were in when I was married.

Q. Where did you get this Bible?

A. It was my husband's Bible and I have had it ever since.

Q. It has been in your house ever since?

A. Yes, sir.

Q. Did you bring it here?

A. I brought it to Mr. Mayne.

Q. When?

A. Last week.

Q. Did you ever show it to him before last week?

A. No, sir.

Q. He never saw it before last week?

A. No, sir.

Q. Did you take a copy of it and give it to him before last week?

A. No, sir. I never had any copies of it.

Q. Did Mr. Mayne ever see it or get a copy of it before last week?

A. He may have a copy. I don't remember.

Mr. MAYNE: I have a copy.

By Mr. KELLOGG:

135 Q. You have changed your mind now; you think he may have a copy?

A. I don't know whether he has a copy or not. The Bible has been in my possession. I may have shown him that record when he was here. The Bible has not been out of my house.

Q. You change your testimony that he never saw it?

A. I don't say he never saw the Bible, but it was never out of my possession. That was the question you asked me.

Q. How many years ago did he first see this Bible?

A. I couldn't tell you. It might have been since this case.

Q. Was not that one of the first things he inquired about when he came to see about this case?

A. I can't remember.

Q. Was it not one of the first things he asked you about the family, as to the names of the heirs and their births and deaths?

A. I suppose it was.

Q. How long ago was that?

A. That I could not remember.

Q. How long before August, 1891?

A. I could not remember that. I can't remember that. I don't remember when he saw the Bible.

Q. Your memory is not very good on those things?

A. Yes, sir; my memory is good. I didn't charge my mind with those things.

Q. You charged your mind particularly with this date in August, 1891?

136 A. Yes, sir; I remember that by some incident, my daughter could not be there. She had been sick I remember.

Q. About the first thing Mr. Mayne asked you when he began to talk with you about this case was about the ages and births and deaths of the members of the family, was it not?

A. I suppose it was. I know we have talked about it.

CLARA B. REMSEN, having been duly sworn, was examined as follows:

By Mr. MAYNE:

Q. Where do you live?

A. 2504 Howard street.

Q. You were born when?

A. I was born at Millsborough, Delaware, June 3, 1868.

Q. Are you married or single?

A. Single.

Q. You are a daughter of whom?

A. George W. A. Remsen.

Q. Your mother is the witness who just preceded you?

A. Yes, sir.

Q. Do you remember seeing your father?

A. I have a very faint recollection of him, as I was very young

at the time. I remember little presents he brought me and that is about all.

Q. Have you seen the Bible with the records of the mar-
137 riage of George W. Remsen to Elizabeth Hopkins?

A. The Bible that had our births in?

Q. Yes.

A. I have seen that; yes, sir.

Q. When did you first see these entries?

A. I couldn't tell you exactly when. We had it at home and I have seen it.

Q. Ever since you were a little girl?

A. Yes, sir. Since I was quite small.

Q. Do you know anything about a land warrant belonging to your grandfather, George W. Remsen?

A. I never knew he had any.

Q. Do you know a Mr. Hendrickson?

A. No, sir; I do not.

Q. Did you ever see such a gentleman?

A. No, sir; I never saw him.

Q. Do you know Mr. Lehman?

A. Was that Mr. Lehman out there this morning?

Q. Yes.

A. That was the first I saw of him. I would not have known him except I heard mamma say who he was.

Q. You were at my office, were you not, in 1891?

A. No, sir.

Q. Were you not down at a meeting at my office?

A. No, sir; not at any meeting. I remember distinctly I could not get off at the time.

Q. You have heard something about the subject-matter of this suit, have you not?

A. I have heard a little of it; yes, sir.

Q. Through whom?

138 A. Through mamma.

Q. When did you first hear it?

A. In August, 1891.

Q. Prior to that did you ever know anything in reference to any land?

A. I heard a little about it but I never knew anything of it.

Q. When did you hear that?

A. I didn't make any note of it. I just heard that there was land, but I didn't know anything about it.

Q. Did you hear about Mr. Hendrickson being on here in February from the West?

A. I can't say that I did.

Cross-examination.

By Mr. BULLITT:

Q. You say that you did not go to the meeting at Mr. Mayne's office held in August, 1891?

A. No, sir; I did not.

Q. You knew that the meeting was to be held there?

A. I knew it was to be held but I didn't go.

Q. You knew that the meeting was to be with the heirs of your grandfather and Mr. Mayne, did you not?

A. Yes, sir. Something to that effect.

Q. And you had been notified as one of these heirs to be present at it?

A. Yes, sir. I had been notified.

139 Q. You knew that the meeting was to be held in order to discuss certain lands which the Remsen heirs claimed out West, did you not?

A. I knew it was somewhere in the West; yes, sir.

Q. You did not know where the land was in the West?

A. No, sir; I did not.

Q. Prior to this meeting at Mr. Mayne's office in August, 1891, you had talked something about the lands and the claims of the heirs with your mother?

A. No, I hadn't talked of it at all. I had only heard her speak of it.

Q. You had heard her mention prior to that date that these heirs of your grandfather had a claim to some lands out West?

A. I heard her say something to that effect.

Q. Did you ever hear her say where these lands were situated?

A. No. I don't think she knew herself. In fact I know she didn't.

Q. You heard her say the land had been located by land warrant which was issued to your grandfather?

A. I don't remember of having heard her say anything about a land warrant.

Q. All you heard her say was simply that the heirs had a claim to some land out West?

A. That was all I heard.

Q. You heard her mention that some time in the winter of 1889 and 1890, did you not?

A. It was somewhere along there. Indeed I can't tell exactly when it was. It was some time about 1890, I think it was. I couldn't say positively.

140 By Mr. KELLOGG:

Q. You have lived in the same house with your grandmother a good many years?

A. Yes, sir; from the time I was a very little child.

Q. You knew that your grandfather was a Mexican soldier?

A. I knew that.

Q. You heard her speak of it often?

A. I heard her say that.

Q. She has often spoken about it?

A. Not so often, but often enough for me to know he was a soldier.

Q. You have known that a good many years?

A. Yes, sir.
Q. You say you remember your father?
A. Just a faint recollection of him. That is all. I was very young.
Q. Did your grandmother ever draw a pension from the Government?
A. I believe she did.
Q. How long have you known that?
A. I could not tell you just how long I have known that, but since I was quite small. She lived with us and I could not very well help knowing it.
Q. Did you ever know a Mr. Poulson?
A. No, sir.
Q. Did you know of Gen. Small or hear of him?
A. I have heard of him, but never knew him. I heard my grandmother speak of him.
Q. Did you ever hear your grandmother say anything about his settling up her affairs for her?
141 A. No; I never heard her say.
Q. You knew he was a friend of hers?
A. I have heard her speak of him.
Q. In what connection have you heard her speak of him?
A. Indeed, I couldn't tell you. I have just heard her speak of him as a friend of hers. That is all.
Q. You know John Wesley Remsen?
A. Yes, sir; I do.
Q. How many years have you known him?
A. Ever since I have been able to remember.
Q. Have you seen him frequently?
A. No; I haven't seen him frequently because he does not reside here.
Q. Did you know Harriet A. Van Zandt?
A. Yes, sir.
Q. Where does she reside?
A. Indeed, I couldn't tell you.
Q. In the city?
A. I believe she does.
Q. How long have you known her?
A. Ever since I can remember.
Q. You say you remember your mother speaking to you once about some land out West before August, 1891?
A. She didn't speak particularly to me, but I remember hearing her say something about it.
Q. She had been over to her mother-in-law's, had she not, and when she came home she spoke about it?
A. I think she had. I don't remember just where she had been.
142 Q. She spoke about meeting a gentleman there from away somewheres?
A. I believe she did.
Q. Do you know whether it was Mr. Hendrickson or not?

A. Indeed, I couldn't tell you the name for I don't remember.
Q. It was at the time she spoke about this land?
A. Yes, sir; I guess it was.
Q. You paid very little attention to it?
A. Very little attention. She did not say anything to me any more than the rest. Just merely spoke about it.

Signature waived.
It is agreed that the testimony of this witness may be taken without the oath being administered, he to be sworn when the commissioner arrives.

JOHN U. HERGESHEIMER examined as follows:

By Mr. MAYNE:

Q. Where do you reside?
A. Haddonfield, New Jersey.
Q. Are you married or single?
A. Married.
Q. To whom are you married?
A. To Emma F. Becket.
Q. When?
A. June 8, 1882.
Q. Where and before whom?
143 A. Curtis F. Turner, at Sommerfield parsonage, Somerfield M. E. church.
Q. Where is the Somerfield M. E. church?
A. In Philadelphia on Dauphin street, Dauphin between Sepviva and Tulip. I was not married at the church but at the parsonage. The parsonage was on York street.
Q. Have you any children by this wife?
A. One living. Three deceased.
Q. Emma Becket was the daughter of whom?
A. Of Mary Ann Becket and Daniel C. Becket.
Q. Do you know the maiden name of Mary Ann Becket?
A. Yes, sir; Mary Ann Remsen.
Q. Do you know whose daughter she was?
A. The daughter of Elizabeth and George W. Remsen.
Q. Is Mary Ann Becket living?
A. No, sir.
Q. Do you know when she died?
A. She died in June, 1882. I don't remember the exact date. I think it was the 12th.
Q. That was subsequent to your marriage to her daughter?
A. Yes, sir. About the 12th I think it was.
Q. Where did she live prior to her death?
A. She lived on Sergeant street.
Q. Did you ever live with her?
A. Yes, sir; at that time.
Q. Did you ever meet her husband. Mr. Becket?
A. No. He was dead before I knew either my wife or her mother.

144 Q. Do you know how many children Daniel Becket and Mary Ann Becket had?
A. Only the two, my wife and Maggie L. That is all I know of.
Q. Is Maggie L. married?
A. Yes, sir. To George W. Beckman.
Q. Were you present at the wedding?
A. I was not.
Q. Have you met Mr. Beckman?
A. Yes, sir.
Q. Was he ever introduced to you as the husband of Mrs. Beckman?
A. Oh, yes.
Q. Where do they live now, Mr. and Mrs. Beckman?
A. 2019 Palethorp street, Philadelphia.
Q. I understand that your wife has been ill. Will she be able to get here tomorrow?
A. I think so.

Cross-examination.

By Mr. KELLOGG:

Q. When did you say you were married?
A. June 8, 1882.
Q. You knew Mary Ann Becket in her lifetime?
A. Yes, sir.
Q. How long did you live in the same family with her?
A. Not more than a week.
Q. How long before your marriage did you know her?
A. About a year and a half.
145 Q. Quite intimately?
A. Yes, sir.
Q. After your marriage how long did she live?
A. Not more than four or five days. I think it was only four.
Q. Did you ever know Mrs. Wetzel, the grandmother?
A. Yes, sir. I knew Mrs. Wetzel.

(At this point the oath was administered to the witness by the examiner.)

Q. Did you know Mrs. Wetzel pretty well?
A. Yes, sir; I knew her pretty well.
Q. How frequently before your marriage had you seen her?
A. That I could hardly say. I didn't often see her. Only occasionally.
Q. Since your marriage have you seen her frequently?
A. Yes, sir.
Q. How frequently?
A. I might say an average of once a month. Not more.
Q. Did you know her second husband?
A. I did not. No, sir.
Q. You knew she had been married twice?
A. Yes, sir.

Q. And that her first husband died in the Mexican war?
A. Yes, sir. So I understood.
Q. From whom did you learn these facts?
A. That I can't say. I just heard it through the family in some way.
146 Q. It was generally known in the family, was it?
A. That he was a Mexican soldier, yes, sir; during the Mexican war.
Q. And died in the Mexican war?
A. Yes, sir.
Q. You have heard your wife speak about it?
A. I have heard her speak of it; yes, sir.
Q. And speak about the family generally, who they were, the members of the family?
A. Yes, sir.
Q. The immediate relations?
A. Yes, sir.
Q. Her uncles and aunts, &c.?
A. Yes, sir.
Q. And cousins?
A. Not much about the cousins.
Q. You have heard her talk of the old lady Wetzel receiving a pension from the Government?
A. I knew she was receiving a pension from the Government.
Q. As a widow of a Mexican soldier?
A. Yes, sir.
Q. You learned that from the family?
A. Yes, sir; I think I heard my wife speak of it, say that she received a pension.
Q. Any other facts in connection with the old gentleman's life and history that you heard her speak of that you remember?
A. No, sir.
Q. Did you ever hear them speak of Gen. Small in Pennsylvania?
A. I never heard them; no, sir.
147 Q. Or any of the other old friends of the old ladies?
A. No, sir.
Q. Did you hear them speak about that she received the back pay from Mr. Remsen's service as a soldier?
A. I never heard anything about it.
Q. Or a bounty?
A. No, sir; not until here recently.
Q. When did you first see Mr. Mayne in connection with this matter?
A. Some time last year, 1891.
Q. Where did you live in 1889, 1890 and 1891?
A. In Haddonfield, and part of 1891 in Hammonton, New Jersey.
Q. In 1889 and 1890 where did you live?
A. Haddonfield, New Jersey.
Q. When did you move to Hammonton?
A. In 1891.

Q. What time in 1891?
A. In February.
Q. You lived there ever since?
A. No, sir.
Q. Where do you live now?
A. In Haddonfield.
Q. Did your wife receive any letters from any one about a claim for some land out West?
A. She did not.
Q. Did she ever receive a letter about it?
A. No, sir.
Q. Did she ever receive a letter from Mr. Mayne about it?
148 A. Only here recently.
Q. How recently?
A. You might say since August, 1891.
Q. Who came to see you about this claim out West?
A. Nobody came to see me.
Q. Who came to see your wife?
A. No one. She heard it through the others.
Q. Whom did she hear it through?
A. Through her grandmother.
Q. Did she get a letter from her grandmother?
A. No. She heard it while she was visiting her grandmother.
Q. When was she visiting her grandmother?
A. That I can't say. Some time in 1891.
Q. She never heard it until then?
A. Not to my knowledge.
Q. Did you ever see Mr. Mayne or did your wife ever see Mr. Mayne about this matter before August, 1891?
A. No.
Q. Never saw him before August, 1891?
A. Yes, sir; saw him before August, 1891.
Q. When?
A. I don't know just when. Some time during the year.
Q. Was it not more than a year before August, 1891?
A. I think not.
Q. Did you hear of the fact that a man from out in the West had come here and tried to get a power of attorney or something from Mrs. Wetzel?
149 A. Yes, sir.
Q. Was it not shortly after that man was here that you heard of that?
A. Heard of what?
Q. That he had been here.
A. Yes, sir; heard that he had been here.
Q. That was in December or January, 1889, or 1890, was it not?
A. I don't know that it was. I don't remember the exact date. I didn't pay much attention to it.
Q. How did you hear of it?
A. I heard it through my wife.
Q. What did she say about it?

A. I don't know.
Q. Can you not give us some idea?
A. She said that there had been a person on here from the West.
Q. What for?
A. In reference to some land there.
Q. What else?
A. That was about all. That it had come to her grandfather as a Government warrant or land grant or something of that kind.
Q. Because he was in the Mexican war?
A. Yes, sir.
Q. A land warrant?
A. Yes, sir.
Q. You heard that?
A. Yes, sir.
Q. Your wife told you that?
A. Yes, sir.
150 Q. That was shortly after that gentleman was here from the West, was it not?
A. I think it was.
Q. Was she writing to you he had been there lately?
A. She said he had been to see her grandmother.
Q. Was she up here to Philadelphia to see her grandmother?
A. She was up to see her grandmother.
Q. When was that?
A. I don't remember.
Q. Was that not in December or January, 1889, or 1890?
A. I don't know.
Q. Was it within a year of that time?
A. I don't know that it was. I paid so little attention to it I don't remember when it was.
Q. You cared so little about it?
A. That is it exactly. I didn't give it much thought.
Q. You do not now?
A. I think more about it now.
Q. Did your wife employ Mr. Mayne?
A. Not individually she did not.
Q. Did she in connection with the rest?
A. Yes, sir.
Q. When?
A. In 1891.
Q. What time?
A. I couldn't tell you just when. Some time in 1891.
Q. In winter or summer?
151 A. In the summer of 1891.
Q. You remember that was in the spring of 1891?
A. Yes, sir. It was some time in the summer of 1891 that my wife employed him in connection with the rest of the heirs.
Q. It was considerable time before that when you first heard the rumors from your wife of this man being here?
A. Not very long.

Q. There was more or less dickering backward and forward with Mr. Mayne about the power of attorney?

A. I don't think there was.

Q. Any correspondence between Mr. Mayne and your family?

A. I don't think there was.

Q. Was there any between your wife and Mr. Mayne?

A. I don't think there was.

Q. Do you know whether there was or not?

A. There may have been some little, but not much that I know of.

Q. Do you know of any? Was there any writing between your wife and Mr. Mayne, or you and Mr. Mayne?

A. There may have been some little, but very little.

Q. Was there or was there not? Not what there may have been, whether there was?

A. There was some correspondence about August or about the time Mr. Mayne came into the case, some time during the summer.

Q. August when?

152 A. August, 1891.

Q. You remember that correspondence was about August, 1891?

A. Yes, sir.

Q. Was there any correspondence before that?

A. No; I don't think there was.

Q. Will you produce that correspondence?

A. If I have it I will.

Q. When will your wife be here?

A. Tomorrow.

Q. Will you produce it then?

A. If I have it I will.

Q. Do you keep your correspondence?

A. Not generally; no.

Q. You can remember that was in August, 1891, can you?

A. In August, 1891.

Q. Why can you not tell me somewheres near when the date was that you first heard this rumor?

A. Because I don't remember the date.

Q. How do you remember this other date? Have you been told to remember that other date?

A. No, sir; of course not.

Q. Have you talked any more with Mr. Mayne about that other date?

A. No, sir.

Q. Have you talked with anybody about what you were going to testify here today?

A. No, sir.

Q. Never talked with Mr. Mayne about what you were going to testify here today?

153 A. No, sir.

Q. You never said to him at any time what you were going to testify to here today?

A. No, sir.

Q. Or anybody else?
A. I did not.
Q. You are sure of that?
A. I am sure.
Q. You say when you first heard of this your wife told you that the claim was about a Mexican land warrant that belonged to her grandfather?
A. Yes, sir.
Q. And that a man had been here from St. Paul?
A. I don't think I said anybody had been here from St. Paul.
Q. From the West.
A. That is more like it.
Q. That is what she said, is it?
A. Yes, sir.
Q. How long after that was it that you or she saw Mr. Mayne or had correspondence with him?
A. During the summer of 1891.
Q. Is that an answer to my question?
A. I think it is.
Q. Can you not remember whether it was one or two years before August, 1891, that your wife told you that statement?
A. No; she did not tell me one or two years before.
Q. You remember that?
154 A. I said it was a short time before that. I don't remember the date. I paid so little attention to it.
Q. It might have been a long while, might it not?
A. It was not two years.
Q. It might have been a year?
A. It might have been less.
Q. It might have been more, might it not?
A. No; it might not. It was not that long.
Q. You are positive of that?
A. I feel pretty certain it was.
Q. What other members of this family have you known and how many years have you known them?
A. I knew the grandmother and my wife's mother and I knew her sister and her husband.
Q. Did you know John Wesley Remsen?
A. I know who he is, but that is about all. I met him once.
Q. When?
A. I don't know.
Q. Do you know Harriet A. Van Zandt?
A. Yes, sir; I know her.
Q. How long have you known her?
A. I first met Harriet A. Van Zandt the day of my wife's mother's funeral.
Q. Have you known her since then pretty well?
A. I think I have seen her since then about once.
Q. What is your occupation?
A. Clerk in the Philadelphia & Reading Railroad office.
Q. How long have you been such?

A. Sixteen years.

155 Q. What position do you hold?

A. As clerk in the Treasury Department.

Q. You say you did not take much interest in this?

A. I did not.

Q. Why; did your wife seem to take much interest in it at that time?

A. My wife did not. The others seemed to take more interest in it than she did.

Signature waived.

THOMAS R. CROOKS, having been duly affirmed, was examined as follows:

By Mr. MAYNE:

Q. Where do you reside?

A. 1217, North Thirteenth street, Philadelphia.

Q. You are a minister of the gospel, are you not?

A. Yes, sir.

Q. Where are you stationed now?

A. I am pastor of the Sanctuary Methodist Episcopal church, Twenty-eighth and Thompson, Philadelphia. It was removed a few years ago from Fifth and Girard avenue. It is the same corporation as it was there and the same church.

Q. How long have you been stationed there?

A. I have been stationed there nearly two years.

Q. Have you a record of the marriages celebrated in that church?

A. I have.

Q. Covering what period?

156 A. (Producing book.) We have two records, and this is the record covering the period from about 1859 or 1860 to 1870.

Q. Turn to the record and see if there is any entry there of the marriage of George W. A. Remsen to Mary J. Derbesheir?

Defendants' counsel objected as irrelevant, incompetent and immaterial, the book being the best evidence of what it contains, and it not having been shown it was produced by the proper custodian of the record.

Question withdrawn.

Q. Is the church incorporated?

Objected to as incompetent and not the best evidence.

A. Yes, sir.

Q. Where did you get that record from?

Objected to as immaterial.

A. This book is now in the hands of one of the old members, under the control of one of the old members of Sanctuary church, who holds this for a claim he has against the church, but he allows me, as the pastor of the church, when I want to verify any

records contained here, to make use of it. I suppose for me as a proper custodian to get this book it would be necessary on the part of the church to institute a suit of law and prove that he has no claim, and then he would give it up or take out a mandamus. You know more about it. To avoid trouble I let him have it and go to his house and get it whenever I want it.

Q. Was T. W. Macclary minister in charge at that church?

157 A. To the best of my knowledge, he was at one time.

Q. Is he living?

A. He is living; yes, sir.

Q. Where is he living?

A. I do not know exactly, but to the best of my knowledge I think he is living somewhere near Twenty-fifth and Jefferson. I could find it. I have a book that has the residences of ministers in. I could find it in the minute.

Q. Turn to the record and say whether there is any entry there of the marriage of George W. A. Remsen to Mary J. Derbeshier.

Objected to as incompetent, immaterial and not the best evidence, the book not having been properly identified as being produced by the proper custodian.

A. There is.

Q. Under what date?

Objected to.

A. Under the date of June 19, 1864.

Q. In whose handwriting is that entry?

A. It is presumably the handwriting——

By Mr. KELLOGG:

Q. Do you know?

A. No; I do not know.

By Mr. MAYNE:

Q. Read the record.

Defendants' counsel object to the reading of the record, the book not having been properly identified by the proper custodian, and the testimony is incompetent, irrelevant and immaterial.

158 A. (Reading:) "June 19th, George W. A. Remsen and Mary J. Derbeshier, residence of both Philadelphia. Place of marriage, Sanctuary parsonage; officiating minister, T. W. Macclary."

(Page containing reference read by the witness marked for identification 12, 19, '92, H. R. E. No. 1.)

Signature waived.

2 P. M.

JOHN WESLEY REMSEN, having been duly sworn, was examined as follows:

By Mr. MAYNE:

Q. How old are you?
A. I was born November 8, 1837, I suppose; that is what my mother says.
Q. Where do you reside?
A. Federalsburg, Carolina county, Maryland.
Q. Are you single or married?
A. Married.
Q. Married to whom?
A. Married at Federalsburg to Miss Martha B. Moore.
Q. You are the son of whom?
A. Of George W. Remsen and Elizabeth, his wife.
Q. Did you ever have any knowledge of a bounty land warrant having been received by your mother for services performed by your father as a soldier in the Mexican war?
A. No, sir. I never had any knowledge of it or know nothing about it, because I was too small and too young at the time to know anything about it.
159 Q. When, where and under what circumstances did you first hear of it?
A. The first circumstances I knew of it I was a child, when I came home from school and found mother crying and she told me father was dead. That a man had been there and told her.
Q. When and where and under what circumstances did you first hear about the land, the subject of this suit?
A. I happened to be in Philadelphia and I heard of it. I think it was some time in 1891. I never knew anything about it before.

Cross-examination.

By Mr. KELLOGG:

Q. You say you were born in 1837?
A. Yes, sir.
Q. When did you leave home?
A. I could not exactly tell you, but it was—you mean to go away from Philadelphia?
Q. To live separate from your mother?
A. My mother broke up housekeeping when I was about twelve years old in Philadelphia. I remained here until I was twenty, and then went south.
Q. Did you live in the same family with her?
A. No, sir.
Q. You lived in Philadelphia until you were twenty years old?
A. Yes, sir.
Q. Then you went where?

160 A. I went down to Georgetown, Delaware, and from Georgetown, Delaware, I got over in Maryland. I have been for thirty-two years right where I am living now in Federalsburg.

Q. Did your mother ever visit you?

A. Never but twice.

Q. Did you visit her?

A. No, sir. I visited her recently. I never went to see her but once.

Q. You knew your father was a soldier in the Mexican war?

A. Only from them.

Q. You knew it from your mother?

A. Yes, sir.

Q. When you were a boy it was talked of he had gone to the war?

A. Yes, sir. I think I saw him with his uniform on as little as I was.

Q. You- mother told you when she heard of his death?

A. Yes, sir.

Q. You were about how old then?

A. I should suppose I was between nine and ten, something like that.

Q. You lived at home with her after that for about how long?

A. Just as long as she kept house.

Q. Then you lived in Philadelphia until you were twenty years old?

A. Yes, sir.

Q. During the time you were in Philadelphia you saw your mother frequently?

161 A. I used to see her once a month. Something like that.

Q. That is after you left home?

A. Yes, sir.

Q. Whom did you live with at the time?

A. I can't tell you. I boarded one place and then another; wherever I was working.

Q. Where did your brothers and sisters live?

A. They lived around town the same way, wherever they were working. The girls were married.

Q. Did Harriet A. live in town?

A. Yes, sir.

Q. She was older than you?

A. She is the oldest of all.

Q. George W. A. lived here?

A. Yes, sir. He was the youngest of all.

Q. Give the names of the rest and where they lived.

A. He stayed right with his mother.

Q. Did Mary Ann live in town?

A. Yes, sir.

Q. What others?

A. Elizabeth. She lived in town.

Q. I suppose, during these years you were living here, you saw them all frequently?

A. Not so very. I used to see them. It was not often we ever met together.

Q. They all knew their father was in the Mexican war?

A. I don't know about the smaller ones knowing it, be-
162 cause George was a little baby, only what the other children told him. I suppose he had an idea of it.

Q. After the war your mother drew a pension from the Government?

A. I understood so. I never was aware of it.

Q. She applied to Gen. Small, who got it for her?

A. That is what I heard he say.

Q. He also got her back pay?

A. I don't know. She never told me anything about it. She never told her children anything of the kind.

Q. You heard her say she got a pension?

A. Yes, sir. I knew she got a pension. I was old enough to know that. In the after years I knew it.

Q. You knew Gen. Small, did you?

A. No. I would not know him if I would see him, I suppose. She told me of him. I guess he has been to the house but I would not know him.

Q. You do not recollect whether you would know him or not?

A. No, sir.

Q. He has been dead a good many years?

A. I don't know, I am not certain. He was living at the commencement of the war. I would not have known him. I have heard her talk of him.

Q. You heard her say that he looked after affairs in getting the pension?

A. I don't know that I ever heard her say anything of that kind.

Q. You knew she got a pension?

163 A. Yes, sir. She told me. She never particularly told the children anything of the kind. They knew it. They knew she got some money from somewhere.

Q. You knew she had got some money from somewhere?

A. She got the pension I said.

Q. You knew it by her telling you?

A. I suppose so. She told the older ones and they told the younger ones I suppose.

Q. Did you ever have a guardian?

A. Not that I know of. I don't recollect anything about whether the court appointed mother guardian or not. We were before the court I remember. I can just barely recollect that. My oldest sister can tell more about that than I.

Q. Has she not since told you about being appointed guardian?

A. No, sir.

Q. You remember being before the court?

A. Yes, sir; I can recollect going before the court. I don't recollect what for or anything of that kind.

Q. You knew when you grew up old enough that a guardian was appointed by probate court?

A. I never knew.

Q. You have known for a good many years what court appoints a guardian?

A. Certainly. The orphans' court.

Q. It was the orphans' court you went before?

A. I am not positive of that.

Q. You went before some court?

A. Yes, sir.

164 Q. Did you ever in after years go and look and see?

A. No, sir.

Q. Did you ever go and look to see anything about your father's estate?

A. No, sir.

Q. Never made any inquiry about it at all?

A. No, sir.

Q. Of anybody?

A. No, sir.

Q. As to whether he ever had any property or not?

A. No, sir; never made any inquiry at all.

Q. You have known for a good many years where you would go to inquire, to the orphans' court?

A. No; I never thought anything of that. I have known the orphans' court.

Q. You know there is where you would go to inquire?

A. Yes, sir. But I would not have ever thought of inquiring because I was not here. If any of the rest had done so they would have let me know I suppose.

Q. You never made any inquiry?

A. No.

Q. Were you in the last war?

A. Yes, sir.

Q. You knew that soldiers got bounties occasionally, did you not?

A. Certainly I did.

Q. You have heard of Mexican soldiers and soldiers in the war of 1812 getting bounties?

165 A. Certainly.

Q. You knew that soldiers in the Mexican war got bounties, did you not?

A. Yes, sir. I don't know that I did in the Mexican war.

Q. You have heard of such things?

A. Certainly. I have heard of all soldiers getting bounties and pensions.

Q. You have heard of soldiers back in 1812 getting bounties?

A. Yes, sir. I have heard of some that didn't get bounties too.

Q. Did you ever inquire to find out whether your father got a bounty in the war or not?

A. No, sir.

Q. It did not interest you?

A. How could I be interested; I was comparatively young when I went away.

Q. When you grew up?

A. No, sir; after I grew up I never thought anything about it. I was interested for myself and trying to root for myself.

Q. You think it was in 1891 when you first heard about this claim to this property out West?

A. I am positive of it, for I had not been in Philadelphia for over twenty years.

Q. What part of 1891 did you come up?

A. I don't know now. I can't say positively. I don't keep account of dates. It seems to me it was—I am not certain. My wife I expect could tell you. It was in the summer. Some time about August or September, 1891. Or later than that.

166 Q. Did you have any correspondence with anybody before that?

A. No, sir. Only my sister-in-law. I wrote to her I was coming. That was all.

Q. Did your sister-in-law write you down about this matter?

A. No, sir.

Q. What did you come up here for?

A. I just merely came here on a visit to see them.

Q. Did you ever have any correspondence with Mr. Mayne before that?

A. No, sir.

Q. Or with any one about this?

A. No, sir.

Q. It was pure accident you happening to come up here?

A. Yes, sir. My mother was sick and I was anxious to see her and I came.

Q. You never knew anything about it?

A. No, sir. I was just in the act of going away when they told me.

Q. That was in August, 1891?

A. Yes, sir. I can't say positively whether it was August or September.

Q. Were you present at a meeting with Mr. Mayne in August, 1891?

A. No, sir.

Q. Did you have anybody present?

A. No, sir.

Q. Did you sign any contract with Mr. Mayne?

A. No, sir.

167 Q. Did you make any arrangement with him?

A. No, sir. I was not at Mr. Mayne's.

Q. Have you ever made any arrangement with him since?

A. No, sir.

Q. To prosecute this suit?

A. No, sir.

Q. Have you ever talked over with him what you knew about the case?

A. No, sir.
Q. You never talked to him at all about it?
A. No, sir.
Q. Never said a word to him about it?
A. No, sir.
Q. Or anybody else?
A. Or anybody else. No, sir.
Q. Nobody has ever spoken to you about the case?
A. No, sir; never heard a word mentioned about it. Of course here recently I have heard something about it, but I haven't corresponded about it. I found out more about the case through the papers more than any other way.
Q. You read and write do you not?
A. Yes, sir.

By Mr. BULLITT:

Q. Do you know a Mr. Hendrickson of St. Paul, Minnesota?
A. No, sir.
Q. Have you ever heard the name of Hendrickson?
168 A. No, sir. I am not acquainted with anybody out there.
Q. Did you ever hear of Mr. Hendrickson coming on here from the West about the latter part of the year 1889 and talking about a certain claim that the Remsen heirs had to property situated out West?
A. No, sir; I never did for I could not. I was not here.
Q. Nobody ever said anything to you about it?
A. No, sir.
Q. You do not know anything about it?
A. No, sir.
Q. Is the name of your oldest sister Harriet A. Remsen?
A. Yes, sir.
Q. Do you recollect when she was married?
A. I can recollect when she was married, but I couldn't say positively anything about the dates for I was so small.
Q. How old were you at that time, about?
A. I suppose I was somewheres between nine or ten, maybe ten or eleven. Something like that.
Q. Do you know how old she is now?
A. I couldn't say positively. I have got her birth in my pocket.
Q. Do you recollect what year she was married in?
A. No, sir.
Q. You do not know the date of the marriage?
A. No, sir. I have got the record of her birth.
Q. Whom did she first marry?
A. Jacob Heyer.
169 Q. Do you recollect when he died?
A. He died since the war. He was out all the time during the war and came home.
Q. After his death she married her present husband?
A. Yes, sir; by the name of Van Zandt. I am mistaken about

that. She was divorced from Heyer. She never married Van Zandt until after the war.

Q. Is Mrs. Van Zandt living now?

A. She is in this room.

Q. Is Mr. Van Zandt living now?

A. No, sir; he is dead. I never knew Mr. Van Zandt. I only knew she married a man by that name. I never knew him.

Redirect examination.

By Mr. MAYNE:

Q. Did you know of the marriage of your mother to Mr. Wetzel?

A. I was not in Philadelphia. Mother came to me and told me she was going to marry Mr. Wetzel and asked me what I thought of it, and I told her I thought she would better her condition by doing it.

Q. Do you know whether she married him?

A. Yes, sir; she did. They lived together. I went and saw them afterwards.

Q. They lived together as man and wife?

A. Yes, sir.

Q. You were asked about Mrs. Van Zandt, your sister. You say you know she was married to Jacob Heyer?

170 A. Yes, sir; I knew him well. The children are living I know yet. They are married.

Q. You say you have a record of her birth with you?

A. Yes, sir.

Q. Where did you get that from?

A. It is a copy given to me. I asked for it one time and mother got somebody to write it and send it down to me. I intended to put it in the Bible but I laid it in a book home in the desk. I put it away. (Memorandum produced.) It is a very old document. I have had it for years. I intended to put it in my Bible but I never did it.

Q. Do you know in whose handwriting the entry there of the birth of Harriet A. Remsen is?

A. I don't know whose handwriting any of it is. I don't think I could tell you whose any of it is. I don't know who wrote it.

Q. When did you receive that?

A. It has been a long, long while ago. As much as sixteen or eighteen years ago. It has been around the house. I forgot all about that thing. I was looking around among the papers and I found it and put it in my pocket.

Copy produced by witness, offered in evidence and marked No. 2, 12-19-'92, H. R. E.

Objected to as incompetent, irrelevant and immaterial and being a copy.

Q. Have you seen much of your sister Harriet in the years since you have been away from home?

A. No, sir. I saw her one time just before I went in the
171 army, and never since until I came up this week or so ago, and then I took her down home with me. I hadn't seen her all that time.

Q. Did you and she go to school together?

A. No, indeed. She didn't go to school. She never went to school. She never went to school at all.

Q. She knows how to read and write, does she not?

A. No, sir.

Q. She does not know how to write?

A. No, sir.

Q. I hand you exhibit of complainants No. 4, 12–17–'92, H. R. E. This is the certified copy of the original in which the name of Harriet A. Remsen appears signed there. That is under date of October 11, 1848, when that signature is purported to have been made. Could she have written her signature?

Defendants' counsel object, first, as calling for the opinion of the witness; secondly, because it is alleged in the original bill of complaint and also in the amended bill of complaint in this action by the plaintiffs in this action that Harriet A. Remsen did sign the original assignment of the land warrant mentioned in the complaint, and thirdly, upon the ground that the question is incompetent, irrelevant and immaterial.

A. If she signed this she certainly did not write it for she couldn't write and can't write today. She never could write.

Recross-examination.

By Mr. KELLOGG:

172 Q. Your mother stated that she went with her and signed that paper herself?

A. That I couldn't say. She might have done it, but I don't know. I don't see how in the world she could.

Q. Can she not sign her own name?

A. No, or my mother either.

Q. Do you know she cannot?

A. I am not positive of it. Unless she learned recently. She has been at my house a week and I know she can't write because she wanted me to write to a lady for her. I know she can't write.

Signature waived.

HARRIET A. VAN ZANDT, having been duly sworn, was examined as follows:

By Mr. MAYNE:

Q. How old are you?

A. I shall be sixty years old this birthday, the 2d day of the new year.

Q. When were you born?

A. I couldn't tell you. That is what Brother John says I am, and he has got my age. I didn't know myself.

Q. When were you married to Mr. Van Zandt?

A. Over forty years ago, on the 6th or 7th, I can't say which, of August, as near as I can get at it.

Q. Where are you living now?

A. I am with my brother in Federalsburg, and expect to remain there until I get tired.

Q. Where is your home?

173 A. My home is with my daughter, Mrs. Fitler, 2017 Palethorp street.

Q. Is Mr. Van Zandt living?

A. No, sir; he is dead.

Q. When did he die?

A. He has been dead four years and better.

Q. Were you married before then?

A. Before I was married to Mr. Van Zandt I was married to Mr. Heyer. My first husband was Mr. Heyer. I had a divorce from him and married Mr. Van Zandt.

Q. When did you marry Mr. Van Zandt?

Q. Just about a month after this late war. After he was discharged from the army.

Q. After the ending of the war?

A. Yes, sir.

Q. How old were you when you were married to Mr. Heyer?

A. Seventeen. I was married in August and I would not be seventeen until the following January.

Q. You are a daughter of whom?

A. George W. Remsen.

Q. And your mother is whom?

A. My mother is Elizabeth Remsen. Elizabeth Hopkins was her maiden name.

Q. What is her name now?

A. Elizabeth Wetzel.

Q. Where does she live?

A. She lives in Rihle street. I couldn't tell you the number. It is between Palmer street and Frankford road.

Q. Had you any children by Mr. Heyer?

174 A. Yes, sir; I had five.

Q. Had you any by Mr. Van Zandt?

A. None at all.

Q. Had you any knowledge of your mother receiving a bounty warrant from the Government for services rendered by your father in the Mexican war?

A. No, sir. I knew nothing only that she drew a pension.

Q. Can you read or write?

Objected to by defendants' counsel as irrelevant under the pleadings and incompetent and immaterial, it being alleged in the bill that the witness signed this land warrant.

A. No, sir; I cannot read or I cannot write. I can spell and

make out a line or so in a public paper. Something like that. But I would not know my own name if it was written and put before me.

Q. Could you write when you were a young girl?

Objected to for the same reason.

A. No, sir; I never could. I never went to school a day in my life, only to Sabbath school.

Q. Did you know Isaac Boileau of the city of Philadelphia?

A. I knew an old man, when I was a little girl, by the name of Boileau. I don't know his first name. "Mr. Boileau," we called him.

Q. What was he?

A. An alderman.

Q. Did you ever go before him with your mother?

A. No, sir; never.

Q. Did you ever sign any papers before him?

Objected to for the same reason.

175 A. No, sir. I never was in Mr. Boileau's office.

Q. Referring to Complainants' Exhibits No. 4, 12–17–'92, H. R. E., under date of October 11, 1848, there appears in the certified copy of an original assignment of a certain land warrant the name of Harriet A. Remsen.

A. That is my name.

Q. Did you sign your name to any such paper?

Objected to for the same reason.

A. No, sir. I couldn't tell you if the name was there.

Q. If such a paper bears such a name, as I understand you to say, it was not written by you?

Objected to for the same reason.

A. No, sir. I never had a pen in my hand to write, for I cannot write.

Q. When did you first have any knowledge in reference to any bounty warrant?

A. Not until my daughter told me. She sent for me. I was in Manayunk living sewing. I go out sewing.

Q. When was that?

A. That was two years and better ago. About two years ago, and then August last she came for me. That is the first I ever knew of it.

Cross-examination.

By Mr. KELLOGG:

Q. You say you knew Isaac Boileau?

A. I knew him as a child. I know he was an alderman. That is all I ever knew.

Q. Is he alive now?

176 A. No, sir; he has been dead years.
Q. Did you know Gen. Small?
A. Yes, sir; I knew him when I saw him.
Q. He is dead?
A. I believe he is dead.
Q. When you sign your name to a paper how do you do it? Do you have somebody write it for you?
A. I do in my insurance. When he comes he writes my name and I put my finger on the pen, but I never did anything like that.
Q. Whenever you sign a paper somebody writes it for you?
A. They have to write it for me.
Q. You take hold of the pen?
A. Yes, sir.
Q. You have done that a good many times, have you not?
A. No, sir. I have no knowledge of ever signing any papers at all only in my insurance book, when I joined that.
Q. You have signed that?
A. Yes, sir.
Q. You remember of seeing your father?
A. Yes, sir. I remember seeing my father.
Q. He went to the Mexican war?
A. I believe he did. That is what we were taught, that my father went to the war.
Q. He never came back?
A. No, sir, I never saw him after that.
Q. You heard he was killed in the Mexican war?
A. Yes, sir. My uncle told us.
177 Q. At the time you heard of your father's death what brothers and sisters did you have?
A. I had John Wesley and Mary Ann and Elizabeth and George.
Q. They were younger than you?
A. Yes, sir.
Q. You were the oldest?
A. Yes, sir.
Q. You say you knew Gen. W. F. Small?
A. Yes, sir; I saw him come to the house and talk to mother.
Q. He looked after your mother's pension, did he not? He got a pension for her?
A. I couldn't tell you who looked after the pension.
Q. She got a pension?
A. Yes, sir; she drew a pension, but I don't know who got it for her.
Q. Did Mr. Boileau used to come to the house?
A. No, sir; never.
Q. Where did you know him?
A. I knew him because he lived two doors from us.
Q. Attached to an assignment here of a land warrant is the name of Isaac Boileau. That was his name, was it?
A. I knew Mr. Boileau by his last name. I do not know his first name.
Q. He was an alderman?

A. I think he was an alderman. We called them magistrates then.

Q. He lived in Philadelphia?

178 A. Yes, sir, on Second above Beaver.

Q. Did you ever know your mother to have any business with Mr. Boileau?

A. I never knew her to have any.

Q. Your mother was appointed guardian of the children, was she not?

A. Yes, sir.

Q. By the orphans' court.

A. I do not know how she was appointed, but I know she was appointed.

Q. She was appointed by some court?

A. Yes, sir.

Q. You remember that?

A. Yes, sir. I remember that.

Q. She went to the court to get appointed?

A. She went to the orphans' court I believe.

Q. Did you ever go with her?

A. Yes, sir; we all went.

Q. You were with her?

A. Yes, sir.

Q. Was she appointed guardian of you too?

A. She was not appointed anything in my presence. Only we stood up and I heard a man say this was Mr. Remsen's widow and there were his children, and mentioned our names, and mother took us out. That was all I ever saw.

Q. Were there any papers signed there?

A. I don't remember seeing any. I don't remember seeing mother sign any papers at all. If she did she did not do it before me.

Q. She might have signed something there?

A. She might have and I didn't know it.

179 Q. That was a good many years ago. You do not remember everything that occurred there?

A. No. I do remember us going and standing there. We had nothing to say. No one spoke to us from the time we went in until we came out.

Q. That was at the orphans' court?

A. Yes, sir.

Q. Did you ever go with your mother anywhere else when she did business?

A. No, sir; no business at all. She never took me.

Q. You do not pretend to remember everywhere you went when you were a little child?

A. I never went anywheres only to Sunday school and home.

Q. You do not pretend to remember every place you went forty years ago?

A. No.

Q. You might have gone with her some place?

A. No, sir; she never took me. She never took anybody when she went anywheres but my uncle's.

By Mr. MAYNE:

Q. What was his name?
A. James Hopkins.

By Mr. KELLOGG:

Q. You say you knew your mother got a pension?
A. Yes, sir. I don't know how she got it.
Q. Did she get any other money?
A. Not to my knowledge.
Q. Did she get any back pay?
A. I could not say that, for I do not know that.
Q. Or bounty?
180 A. That I do not know. Mother never talked her business before her children. We did not know as much as children do now.
Q. Who do you know, of the old residents here in Philadelphia, that lived here then?
A. They are pretty much all dead. I do not know. I could not go around and hunt.
Q. Do you know anybody that you knew then?
A. No, sir; I don't know any one but my uncle. That is the only one.
Q. Where does he live?
A. I believe she said Charlotta street. He used to live Front and Huntingdon. I cannot tell for I don't reside in the city. His name is James Hopkins.
Q. He lives in Philadelphia?
A. Yes, sir.
Q. What is his business?
A. House carpenter. Mr. Beckman can tell you where; he is a brother-in-law of Mr. Beckman's.
Q. He is an old man, is he?
A. Yes, sir.
Q. Did he know your father?
A. Yes, sir.
Q. And the family very well?
A. Yes, sir.
Q. Did he know Alderman Boileau?
A. Yes, sir.
Q. Did he know Gen. William F. Small?
A. That I can't tell you.
Q. Who else did you know here in Philadelphia?
181 A. I do not know any old people. Mr. McCauley and Mr. Harvey and those people are all dead, around Second street. When I was married I went away from home up in Lycoming to live, and I don't know much about it. I married young and went away from home young.

Q. When did you first hear that your father was entitled to a land warrant?

A. About two years ago my daughter sent a letter to me. She told me to come home and I came home and she told me. I always took her with me, for I can't read nor write. I always took her because she could.

Q. About two years ago?

A. Yes, sir.

Q. Where did you live then?

A. Lycoming, Pennsylvania, when I first heard of it. That is fourteen miles above Jersey shore.

Q. That is when you first heard of it?

A. Yes, sir.

Q. About two years ago?

A. Yes, sir.

Q. It was in the winter that you first heard this, was it not?

A. I can't tell you that, whether it was. You could go without a shawl. It was in the fall when my daughter first told me. It was before Christmas when she first made me acquainted with it and I came home.

Q. About two years ago?

A. Yes, sir.

Q. Was it not about three years ago?

A. No; it was two years ago.

182 Q. Two years ago this fall?

A. Yes, sir.

Q. You are sure of that?

A. Yes, sir.

Q. Did you ever hear of a man coming here from St. Paul?

A. No, sir.

Q. To see your mother?

A. No, sir.

Q. Who did you say came to tell you?

A. My daughter. Miss Beckman acquainted her with it and she sent for me and since then I have been in the city living.

Q. When did you first see Mr. Mayne about this?

A. One year last August.

Q. Did you tell over the facts to him that you knew?

A. No, sir. I only came with the rest to see what he could do. If there was anything to be done, I wanted my share too.

Q. You say you knew that your mother got a pension?

A. Yes, sir; I knew when she would go to draw it. She first drew it at the United States mint. When she first drew a pension she drew it from there.

Q. Where did she go to get it? Where is that?

A. I don't know where that is.

Q. Did you go with her?

A. No, sir; I never did. My grandfather and uncle went with her for she was an invalid and had to be taken in a carriage.

Q. You will be sixty years old when?

183 A. The second day of January next. That is as near as I can come at it. Brother John has the ages. I have not got them. Me being away from home I know very little about my people.

By Mr. BULLITT:

Q. Did you ever hear of a man named Hendrickson coming on here from the West to see the heirs of your father in regard to some land out West somewhere?

A. No, sir. I never heard of it.

Q. Did you ever hear of a man named Stevens living in the West who knew something about a claim of the Remsen heirs about some land out West?

A. I never did.

Q. When you first heard of this claim to the land in controversy in this suit did you not go to consult a lawyer?

A. No, sir; I did not. I didn't know much about it and I didn't put much stock in it, for I didn't think it was really so. I thought when mother got the pension that was all she was entitled to.

Q. You did not do anything then until you came to Philadelphia in August, 1891, to see Mr. Mayne, together with the other heirs?

A. We were there once; yes, sir.

Q. You saw Mr. Mayne at that time?

A. I saw Mr. Mayne at that time. My daughter brought me.

Q. Mr. Mayne explained to you the nature of this claim, did he not?

A. Yes, sir.

184 Q. He explained it to all the heirs at that interview?

A. He did to all of us there.

Signature waived.

Mr. Mayne offered in evidence certified copy of the record of the orphans' court testified to by Mr. Fortin, clerk, which copy is marked Complainants' Exhibit No. 3, 12-19-'92, H. R. E.

TUESDAY, *December* 20, 1892—10 a. m.

Present: The examiner, Henry R. Edmunds, Esq. Counsel as before.

THEODORE STEVENS.

It is agreed that the witness may be examined without being sworn, to be sworn subsequently.

By Mr. MAYNE:

Q. What is your residence?

A. 960 North Fifth street.

Q. You are the pastor of St. John's M. E. church in the city of Philadelphia?

A. I am.

Q. How long have you been pastor of that church?

A. Since last March.

Q. Do you know who was pastor there in 1848?
A. I do.
Q. Who?
185 A. Joshua A. Humphreys.
Q. Is he living?
A. No.
Q. Where are the records of marriage kept in your church?
A. They are kept in the safe in the church.
Q. Have you brought with you the records of marriages in that church in the year 1848?
A. I have.
Q. Is that the record? (Book shown witness.)
A. Yes, sir.
Q. Where did you get it from?
A. I got it out of the safe of the church.

Witness produced book of records.

Q. Look under the year 1848 and see if there is any record there of the marriage of Jacob Heyer to Harriet A. Remsen?
A. I find "Married August 6, 1848, Jacob Heyer to Harriet A. Remsen, J. A. Humphreys."

Objected to by defendants' counsel as incompetent, irrelevant and immaterial, the witness reading from the book, the book not being properly identified.

Q. In whose handwriting is that entry?
A. It is in the handwriting of Joshua A. Humphreys.
Q. What is the date of the marriage?
A. August 6, 1848.

Entry in book read by witness marked for identification, 12–20–'92, H. R. E.
Objected to as secondary evidence and incompetent.

Q. Is St. John's church incorporated?
186 A. It is. It is incorporated as St. John's Street——
Q. Is that the only record you have of marriages in that church?
A. We have another record.
Q. Are the records of marriages made at the present time entered also in that book?
A. No, sir. We cannot keep one book to stretch over a century.
Q. Have you any objections to our putting this book in evidence and allowing it to go to St. Paul, Minnesota?
A. I have not any right to do that. It is the corporation. I do not object. It is in my possession as custodian. I am the pastor. The corporation has a board of trustee- that have charge of all the property. I have not any right.

Cross-examination.

By Mr. BULLITT:

Q. Were you acquainted with Mr. Humphreys in his lifetime?
A. I was.
Q. Are you familiar with his handwriting?
A. I know it well.

(The witness was here sworn by the examiner.)
Signature waived.

THOMAS W. MACCLARY, having been duly sworn, was examined as follows:

By Mr. MAYNE:

Q. You are the pastor of Sanctuary M. E. church?
187 A. I was years ago. That church is not in existence now. I was pastor there from 1864 to 1866, inclusive.
Q. Did you know George W. A. Remsen?
A. Yes, sir.
Q. And Mary J. Derbeshier?
A. Yes, sir.
Q. Did you officiate at their marriage?
A. Yes, sir.
Q. When was that marriage celebrated and where?

(Witness produced memorandum book.)

By Mr. KELLOGG:

Q. What is that book?
A. It is my private record.

The witness referred to his private memorandum book and stated: I married these persons at 985 North Fifth street, Philadelphia, June 19, 1864; George W. A. Remsen to Mary J. Derbeshier, both of Philadelphia.

I- you should need me at any time there is my address. (Handing card to counsel.)

By Mr. MAYNE:

Q. Have you any objection to our offering that book in evidence and depriving you of it for two or three years?
A. Yes, sir; I have. I do not like to risk it so far and so long away from me.

Entry read by the witness marked for identification 12-20-'82, H. R. E.

Q. Do you know this lady standing here? (Referring to Mary J. Remsen.)
188 A. Yes, sir.
Q. Who is she?
A. This is Mrs. George W. A. Remsen, formerly Mary J. Derbeshier.

Q. When did you last hear from George W. Remsen, or last see him?

A. I have not seen him since I married them. I do not believe I have seen him since I married them. I was somewhat acquainted with him beforehand.

Q. Did you ever celebrate a marriage between George W. Beckman and Miss Laura Becket?

A. Yes, sir; I did.

Q. When and where?

(Witness referred to private memorandum book.)

Q. Have you a private entry of it in your memorandum book?

A. Yes, sir. In this book. (Referring to book.) I was at the Port Richmond charge then, in the northeastern part of the city. "George W. Beckman, 1878, July 9th, to Miss (they called her Laura) Mary L. S. Becket, both of Philadelphia."

Q. Where did you marry them?

A. In the neighborhood of Siloam Methodist church in a small street above Otis street.

Q. Do you know Mrs. Wetzel?

A. Yes, sir. I have known her for thirty years and seen her frequently.

Q. Did you know her prior to her marriage with Mr. Wetzel?

A. Yes, sir.

Q. Whom did you know her as then?

189 A. She was Mrs. Remsen.

Q. What Remsen was that?

A. That was the mother of George whom you are inquiring about.

Q. Who was the father?

A. The father was named Hopkins, formerly of Delaware. He came to Philadelphia from Camden, Delaware.

Q. The father of whom?

A. Mrs. Remsen's father. She was a widow twice. Her maiden name was Hopkins.

Q. As Miss Hopkins she married whom?

A. She married Remsen, this boy's father whom you are inquiring after.

Q. Did you ever know of her husband, Mr. Remsen, having been in the Mexican war?

A. No, sir. Now I am off; I do not know anything about that.

Q. Which of the children did you know of Mrs. Wetzel?

A. I knew more intimately one who is now dead; that is Mrs. Becket, the mother of this Laura Becket whom I married. She had other children. There was a Harriet. I did not know them. I cannot speak for that.

Q. Do you know who Mrs. Becket married?

A. No, sir. She was a widow when I came to the charge.

Q. Tell me whether you can identify this lady as Mrs. Wetzel (referring to Mrs. Wetzel)?

A. Yes, sir.

190 The witness identified Mrs. Wetzel as Mrs. Remsen. Signature waived.

ELIZABETH WETZEL recalled.

By Mr. MAYNE:

Q. Do you know this lady (Mrs. Hergesheimer)?
A. Yes, sir.
Q. Who is she?
A. She is my grand-daughter, Emma Hergersheimer. She is my draughter Mary Ann Becket's daughter.
Q. Who is this gentleman (Mr. Hergesheimer)?
A. This is her husband.
Q. What is his name?
A. Uber.
Q. Uber what?
A. J. Uber Hergesheimer.
Q. In your testimony in reference to your daughter Harriet, were you present with her at Mr. Boileau's office?
A. I took her with me for company.
Q. Did you see her sign her name to that instrument?

Defendants' counsel object as incompetent, irrelevant and immaterial, and also because it is alleged in the amended bill of complaint and admitted in the answer thereto in this action that Harriet A. Remsen signed her name to the land warrant assigning it to
191 Nathan C. D. Taylor, and that this witness has already sworn to the fact that she saw her sign her name to the paper.

Question read to the witness.

A. No.
Q. What did you refer to when you said you saw her sign that?
A. I took her with me for company as a child—I had nobody else to take—and when I put my signature to the paper—I had been used with all the other papers to taking my brother or my father.
Q. Which brother?
A. I have not got but one. I turned around to the Squire after I signed it and I says, "Does she have to sign it?" and he says, "Well, she can, if she chooses." I did not go around—I did not see her sign it. He said she could if she choose. Somebody or other told me she signed it since—some years back—said that she signed the paper, but I did not see her do it.
Q. Have you any knowledge of her ability to write?
A. She can't write.
Q. Never could?
A. I never knew her to write. That is the reason I told that gentleman that that was not her writing, because I know she don't know how to write.

Cross-examination.

By Mr. KELLOGG:

Q. You remember testifying here on Saturday?

A. Yes, sir.

192 Q. You testified to the truth then, did you?

A. Certainly I did, as far as I knew.

Q. You say that is when you went to sell this land warrant?

A. It was before the man took it to sell.

Q. That is what you went there to sign so as to sell the land warrant?

A. Yes, sir.

Q. (Exhibit 4, 12–17–'92, H. R. E., shown witness.) This exhibit says "For vale received, we, Elizabeth Remsen, widow, for myself, and as guardian of the person and estate of Mary Ann Remsen, John Wesley Remsen, Elizabeth Remsen and George W. A. Remsen, minor children of George W. A. Remsen, deceased, duly appointed by the orphans' court of the city and county of Philadelphia, and Harriet A. Remsen, do hereby sell and assign unto Nathan C. D. Taylor, all our right and title and all the right and title of the said minor children to the within certificate or warrant No. 28811 for one hundred and sixty acres. Witness our hands this eleventh day of October, 1848, at Philadelphia, in the State of Pennsylvania." Signed "Elizabeth Remsen, her mark, for myself and as guardian of the minor children of George W. A. Remsen, deceased." Signed, "Harriet A. Remsen." Witnessed by Isaac Boileau and William F. Small. "Acknowledged before me this eleventh day of October, 1848, at Philadelphia, in the State of Pennsylvania. Isaac Boileau, justice of the peace."

193 That is what you referred to, is it not? That is the paper you referred to as having signed to sell the land warrant?

A. Yes, sir. I never heard it read.

Q. That is what you mean to say when you sold the land warrant?

A. Yes, sir.

Q. That is the paper you referred to?

A. That is the paper I referred to, I suppose.

Q. Mr. Boileau was an alderman?

A. Yes, sir.

Q. A justice of the peace?

A. Yes, sir.

Q. He lived how far from you?

A. A couple of squares.

Q. You took Harriet with you?

A. I took her with me as I told you before. I wouldn't say I did if I didn't. I took her with me for company.

Q. She was there when you signed it?

A. She was there. I signed it, and as I turned around to sit down from standing up from the desk I asked him, "Does she have to sign it?" He says, "She can do as she pleases." I paid no

more attention to it. I was all confused at the time. My sister was dead and I was going away next day.

Q. You suppose she signed it?

A. I supposed she signed it.

Q. And you said so the other day?

A. I said the other day——

Q. That she signed it?

A. I was not positive—when I went home and studied I
194 thought to myself that I did not see her, and I said I did not see her sign it. After I got home and studied I thought to myself did I say that she signed it. I did not see her do it. I would not say anything but what was so.

By Mr. BULLITT:

Q. Somebody talked to you about this case yesterday, did they not, or last night?

A. No, sir. There was nobody talked to me.

Q. Nobody has spoken to you?

A. There was no one in my house. No one has talked to me, only I was talking to my daughter-in-law coming down, but not about that.

Q. Coming down this morning?

A. Yes, sir; we were talking.

Q. Did Mr. Mayne go to see you last night?

A. No, sir.

Q. Did he go to see you yesterday afternoon?

A. No, sir.

Q. You are sure of that?

A. Yes, sir.

Q. What made you come down this morning? Who told you to come down to testify again in this case?

A. They did not tell me anything about coming down to testify in the case.

Q. How did you happen to come down this morning?

A. My daughter-in-law said that there was something about the marriage, about my brother, somebody would come here and satisfy you of my being married, being Mr. Remsen's wife.

195 Q. Your daughter-in-law said that to you?

A. Yes, sir.

Q. When did she tell you that?

A. She told me that this morning. I told her I could not come; I didn't feel able to come. I slept none of last night. I was sick all night.

Q. Which daughter-in-law was it that told you that?

A. I have but the one here.

Q. Mrs. Remsen?

A. Yes, sir. She told me I had better come down this morning.

Q. For the purpose of testifying in this case?

A. That they expected somebody would be here to identify me as Mr. Remsen's wife.

Q. Did not your daughter tell you to come down here and swear that Harriet A. Remsen did not sign that assignment?

A. No, sir.

Q. You are certain of that?

A. No.

Q. You are not certain?

A. She did not tell me.

Q. Nobody told you to come down?

A. Nobody told me to come anything about that. I did not know it until I came in here. I was telling you I thought it over last night myself.

Q. What made you think it over last night?

A. I was studying over to myself. There was no one with me I am by myself.

Q. What were you studying over?

196 A. I was thinking about her writing when I knew she could not write. I hated to say out right away she couldn't write at all. I said I doubted it.

Q. Nobody told you of the testimony your daughter Harriet A. Remsen gave here yesterday?

A. No, sir.

Q. You are certain about that?

A. I haven't seen any of them. I live too far from them.

Q. You just happened to think over this?

A. I was thinking over it about when I said her name being written there, when I knew she didn't do it.

Q. Is it not a fact that when you went down to Mr. Isaac Boileau's office to sign this assignment of the land warrant with you-daughter, Harriet A. Remsen, that after you had made your mark on the paper one of the witnesses who was present took a pen and wrote Harriet A. Remsen's name and Harriet A. Remsen touched that pen with her finger as he wrote her name?

A. I don't know. There was nobody there.

Q. Were there not any witnesses there?

A. I did not see anybody in the office but the old gentleman.

Q. Is it not a fact that he wrote her name and she touched the pen as he wrote? You saw that, did you not?

A. No, sir.

Q. You did see that?

A. No, sir.

Q. You are positive of it?

A. Yes, sir.

197 Q. There cannot be any mistake about it?

A. No.

Q. What did you mean when you said the other day she did sign it?

A. I did not say she signed it.

Q. You are positive you did not swear she signed it?

A. I don't think so. I said I took her there and it was asked if she could sign it. There is many times a little mistake made in

things, you don't mean it or don't understand it right. I won't say I saw what I didn't see. That paper was left there until next day.

Defendants' counsel on the trial of the case will move that the last statement of the witness be stricken from the record because it is a voluntary statement and not responsive to the question.

Q. You recollect what you said on Saturday, do you not?

A. I can't remember everything I said.

Q. You recollect what you said in reference to going down to Mr. Boileau's office and what you said in reference to your signing this paper and Harriet A. Remsen signing it?

A. Yes, sir. I just now told you.

Q. What did you testify to Saturday?

A. I said she went with me and I asked the squire whether her name should go on it or not.

Q. What else?

A. I expected she signed it. I didn't say she really did.

Q. You did not say that?

198 A. I don't think I did.

Q. Are you positive?

A. I do not think that I said she really signed it. I said the question was asked me and I expected her name was signed to it.

Q. What did you say on Sunday in reference to her signing?

A. I don't recollect any more.

Q. Give us just what you recollect that you said last Saturday in regard to her signing.

A. I told you that she went with me and that Mr. Boileau—I turned around to him when I went to go towards the door, and I said, "Don't she have to sign it?" and he said she could do as she pleased, and whether she did it or not—I thought she did it, if she didn't.

Q. Did you not say that she did sign it?

A. No; I didn't. You might have misunderstood me. I wouldn't say a person did a thing that didn't.

Q. Here is a copy of your testimony as you gave it here last Saturday. Last Saturday you were asked this question, "Q. You say that Harriet went with you? A. Yes, sir." Is that true?

A. What is it?

Q. You were asked this question last Saturday, "You say that Harriet went with you." You answered it, "Yes, sir." You testified to that last Saturday.

A. I took the child with me for company.

Q. You testified to that last Saturday, did you not?

A. Yes, sir.

Q. Is that true or false?

199 A. That is the truth. I took her with me.

Q. You were asked this question last Saturday, "Q. And she (that is Harriet) signed the paper too." You answered that "Yes, sir." Did you testify to that last Saturday?

A. I didn't say she really signed it. I was asked the question—I asked the question whether it was needed. I didn't see her sign it.

Q. You testified last Saturday as follows: "And she signed the paper too? A. Yes, sir." Is that true or false?

A. You don't speak it the way I do.

Q. I am giving you the exact words you used last Saturday.

A. I said he asked me about the paper.

Q. You said, in answer to this question, "And she signed the paper too? A. Yes, sir." I want to know whether that was true or false?

A. I didn't see her sign the paper.

Q. When you said "Yes" to that question last Saturday you were not telling the fact?

A. I expected she had. I didn't see her do it. I don't make a practice of saying anything but the truth.

Q. Last Saturday you testified as follows: You were asked this question: "She," (that is Harriet) "went with you and signed the paper?" You answered as follows: "Yes, sir. She signed the paper but it was not read to her." You were also asked this question: "You do not know whether she read it or not? A. Yes, sir; I know I stood there and she made her mark."

200 A. I didn't testify to that.

Q. You are positive about that?

A. I didn't say no such word.

Q. Who has been talking to you since yesterday, and who has told you to change your testimony this morning?

A. I didn't change my testimony at all.

Q. You are positive of that fact, are you?

A. I haven't changed it. The word has been changed there, whoever read it. I didn't say no such positive word about her writing it. I don't know as I would have come down this morning as sick as I was if it was such a thing as that, because I don't consider it is right.

By Mr. KELLOGG:

Q. Do you know that every word you say is taken down by this shorthand man?

A. I can't help that.

Q. Do you not know he took those words on Saturday just as you said them?

A. Yes, sir; but I put no stress that she really signed it.

Q. How large a room was this where you signed this paper, the alderman's office; how big a room was it?

A. I don't know. I don't remember in particular about that.

Q. The old man was there?

A. There was a couple of desks in it.

Q. The old man was there?

A. Yes, sir.

Q. And Harriet was there?

201 A. Yes, sir.

Q. Harriet was there, was she not?

A. I say she was there.

Q. You saw her there?

A. Certainly I saw her when I took her with me.
Q. She did not go out of your presence?
A. Yes, sir. She was around on the other side.
Q. Of the table?
A. I was not at any table. I stood alongside of the desk and made the mark.
Q. And Harriet was there too?
A. She was not aside of me. She was on the other side.
Q. You could see her?
A. I couldn't see her when I went and sat down; when I sat down I couldn't see her.
Q. You asked the alderman if she should sign it?
A. I asked him when it was ready for her — sign it.
Q. He said yes?
A. He said she could do as she pleased?
Q. Then she signed it?
A. I thought so.
Q. You still think so?
A. No, sir.
Q. You have changed your mind since Saturday?
A. No. My reasons changed. I studied.
Q. You say you never mentioned this subject to Mr. Mayne or anybody else since Saturday?
A. I haven't seen the man until I came in here.
Q. You have not talked with him about it?
A. No, sir.
Q. Or anybody else?
202 A. No. Who have I had to talk with; I have been sick ever since I went home.
Q. Have you talked with anybody about it?
A. No, sir. There is no one except my sister knows anything about this business. I live with her.
Q. Did you testify to this on Saturday, "Q. That is the way it appears on the paper, Harriet A. Remsen? A. I thought she signed it Heyer."
A. I thought so. I didn't say she did, did I.
Q. You thought so?
A. I thought so.
Q. You still think she signed it Heyer?
A. I don't know what to think. It is hard for me to tell what to think.
Q. That was a good many years ago?
A. Yes, sir. Certainly it is a good many years. I was in a great deal of trouble. My sister was laying dead at Smyrna.
Q. Harriet went to Sunday school when she was a girl, did she not?
A. Yes, sir.
Q. Did she ever go to school?
A. Yes, sir. She didn't take education like the other children.
Q. But she went to school?
A. She went to school.

Q. How long did she go to school?
A. I can't tell you.
Q. You know she went to school?
A. She went to school a good while when we lived in the
203 country, more than she did in Philadelphia. She never took to education like the other children.
Q. How long do you think she went to school?
A. I don't know.
Q. A year or two?
A. She went from the time she was very small. There were little country schools, they could go at any age.
Q. She did not get much education?
A. No. She didn't take it as the rest of the children did. She didn't seem inclined to it.
Q. She learned to read?
A. Very poor reader, I guess.
Q. And write a little?
A. No, sir; I never saw her. I know she would always get her brother or sister to write anything for her.
Q. Did you ever see her sign any papers, somebody sign the name for her and she hold the pen, when she wrote?
A. No, sir; but when she wrote to her husband her brother did it for her.
Q. Would he sign it and she hold the pen?
A. She didn't hold the pen.
Q. She held the pen?
A. No.
Q. Did you know about her getting any insurance or going into any insurance?
A. No, sir. I don't know anything about it.
Q. Or pension? She never got a pension?
A. What for? I never knew her to get any. I have not
204 seen her so you need not ask me much about it. I haven't seen her to speak to her until a few days when she came up to come here. For about seven or eight years she has been in the country.

By Mr. PORTER:

Q. We have got things in a kind of a tangle, and I want to get it as straight as I can. Now, on Saturday you said one thing, and today you have denied it.
A. No, sir.
Q. It seems so, from the notes the stenographer took.
A. It is not so. It is the same thing.
Q. You still think you said the same thing today as you did on Saturday?
A. I say the same thing concerning her. What I said is the truth, and I want to tell you nothing but what is the truth.
Q. I know that, but you are in a false position apparently, and I want to get the matter straightened out. You said one thing Saturday, and today you said something else.

A. You must have misunderstood me.

Q. Just think of that day when you and Harriet were in the alderman's office. At that time you were the guardian of your little children, were you not?

A. I did not look at it so much as the people speak these days about it. Certainly I was the one to protect them and take care of them.

Q. Had you ever been appointed guardian by the court?

A. Certainly I was, but I did not think so much of it then.

205 Q. Were you appointed the guardian of Harriet, too?

A. No, I was not.

Q. Well, Harriet was with you there that day?

A. She took the children there for me.

Q. She was a minor child? She was a little girl?

A. She was too old to have her name on the paper, the lawyer said.

Q. She was there, and was between fifteen and sixteen years old, or how old was she?

A. I don't know. When I went to give my children's names to the lawyer I commenced with her and he told me when I gave her age that she was too old, and that it was the younger ones he wanted, and that is the reason her name is not among the children, but she went to the court; I went to the lawyer's house, I used to visit them, I was acquainted with his wife, and he told me to come and go down to the court with him, and she went down to the court with the children, and I met her at the door.

Q. Did she know what they were going to court for?

A. I don't know. She knew we were going to do something. I cannot remember all such little things as that so far back.

Q. I want you to try and remember the day in the alderman's office.

A. I remember it just as well as if I studied for a year.

Q. What I want to find out is this: Harriet was certainly there with you?

A. I don't say she wasn't.

206 Q. And she knew what you were signing, didn't she?

A. I told her I had to sign a paper.

Q. Didn't she know that you were signing a paper in relation to this land warrant?

A. I did not know much about it myself.

Q. Didn't she know?

A. I don't know whether she did or not.

Q. There was your own daughter in the office with you going to sign a paper, and yet you say you do not know whether she knew what the paper was or not?

A. I did not ask her any questions about it one way or the other. I never heard the paper read.

Q. You knew what the paper was for?

A. He told me.

Q. Didn't Harriet know what that paper was?

A. She may have known. I did not tell her anything about it.
Q. Don't you think she knew that day?
A. She knew I was signing a paper.
Q. Didn't she know what the paper was?
A. I cannot tell you what she knew about it. I did not say anything to her what the paper was.
Q. Did you know that she had any interest in what you were doing?
A. No.
Q. Didn't you know that your little children had some interest in this money?
A. I expected that it was money for me to raise them with.
207 Q. Didn't you know then that Harriet had some interest in the money you were getting?
A. She had the same while she was home.
Q. Are you prepared to say that she did not know what was done that day in the office when she was with you?
A. I don't say she did not know, or don't say she did. Certainly she knew I was signing a paper, but I cannot say whether there was anything said about what the paper was.
Q. Now, on Saturday last, if our notes are correct, you were under the impression then that she either signed or made her mark?
A. That is what I expected she done.
Q. If she did that she certainly must have known what the paper was about?
A. He must have told her when I did not hear him. I did not pay any attention.
Q. Didn't you tell her what it was?
A. No.
Q. Would you let your child sign a paper in your presence, or make her mark to it, unless she knew what it was about?
A. I had nothing to say one way or the other about it, only asking the squire whether she should sign.
Q. Why did you ask him that question if she had no interest in it?
A. I expected she would sign the paper. I did not know anything about her having any more interest than any of the rest. The reason I asked her to sign was because I had my brother
208 to sign the other paper, and my father and I thought it was better than for me to sign the paper alone and nobody else.
Q. You think she did sign it, or made her mark?
A. So I did, I did not know any better.
Q. And you thought so on Saturday? You thought you could find her mark on that paper?
A. I do not think she wrote that name, because I knew she could not do it.
Q. Do you think you have seen her signature on this paper?
A. No, I would not know it. I never seen her make one.
Q. Can you see this signature on this paper?
A. That cross, I see that.

Q. Does this look like the paper you signed that day?
A. I could not tell you at all, for I don't remember what it looked like.
Q. Look below there and see the name of Harriet A. Remsen, do you see that? Does this look like the paper, if you can remember?
A. I cannot remember. I don't remember the size of it or anything about it. I have no recollection of it.
Q. Did the children know what you were appointed guardian for, at all?
A. I don't know.
Q. Was there any other money coming to them except this land warrant?
A. No, nothing except what I got from Mexico from their father.
209 Q. Nothing but what came through his being a soldier?
A. No, sir.
Q. Did you give Harriet any of the money which you got for this land warrant?
A. No; I did not give any to any of them. It was to keep them on. It would not go very far, $3.50 a month of a pension.
Q. Then Harriet did not get any of the money?
A. No, sir.
Q. Did you spend any of it in keeping her?
A. Only on the table.
Q. Just the same as the rest?
A. Yes, sir; but she was not there very long.
Q. And she was in court the day the guardian was appointed for the other minors?
A. Yes, sir; she was in court with the children. She waited at the entrance with the children until I came.

It is stipulated that the stenographer's notes, appended to the commissioner's report of the testimony, taken on Saturday, December 17th, 1892, are correct as therein reported, with particular reference to the testimony of Mrs. Wetzel.

By Mr. KELLOGG:

Q. Do you know a Mr. Poulson, pension attorney?
A. Yes, sir.
Q. Where does he live?
210 A. I don't know. I used to know when I drew a pension, but I don't know anything about him now.
Q. Do you know James Hines?
A. Yes, sir; he was my groomsman.
Q. Where does he live?
A. The last I heard of him, about three years ago I heard he was in Gloucester. I have not seen him for twenty-five years. I don't think I would know him if I seen him.
Q. Where did Harriet go to school?

A. Master street, the last school she went to. I think it was Master street.

Q. In Philadelphia?

A. Yes, sir.

Q. Who did she go to school to, do you remember any of her teachers?

A. I don't remember. I used to send her to a small pay school. In the country she went to school to a small pay school.

Q. Where was that?

A. In the State of Delaware.

Q. What town?

A. Camden. When she was small.

Q. Who did she go to school to, do you remember?

A. A man by the name of Simpson.

Q. What was his first name?

A. I cannot tell you.

Q. Is he alive now?

A. I think not. I guess not. My parents came from down there.

Q. From Camden, Delaware?

A. Yes sir.

211 Q. Do you know of anybody that Harriet went to school with, any of her schoolmates?

A. No, I don't recollect anything about it.

Q. She went to school more than a year, you think?

A. Certainly, she went more than a year. She went that much before she was big enough to learn much.

Q. How many years do you think, three or four years?

A. I would not like to say, because I might make a mistake, maybe.

Q. I want your best opinion.

A. I could not tell you. I don't recollect.

Q. You think she went more than two years, do you not?

A. I guess she went near about that much when very small.

Q. Then she went after that?

A. She went after that, but I could not begin to tell you how long, and for fear I would be mistaken I had better not say how long.

Q. The lawyer told you she was too old to have a guardian appointed?

A. He said she was over the age, and that I should give him the name of the next one.

Q. And you gave him the next one?

A. Yes, sir; Mary Ann. There was one dead between them.

Q. You gave him those that were alive? That is the only time you went to the orphans' court?

A. Yes, sir.

212 Q. You did not go there any other time?

A. No, sir.

Q. You did not sign any papers there in court?

A. No.

Q. The only place you signed any papers was this place, when you took her in with you?
A. Yes, sir.

Mrs. EMMA F. HERGESHEIMER sworn.

By Mr. MAYNE:

Q. You are the daughter of Mary Ann Becket, formerly Mary Ann Remsen, I believe?
A. Yes, sir.
Q. You have been identified here by Mrs. Wetzel as one of her granddaughters?
A. Yes, sir.
Q. Where do you live?
A. Haddonfield.
Q. Are you married to Mr. J. E. Hergesheimer?
A. Yes, sir.
Q. When were you married?
A. In 1882, the 5th day of June.
Q. Where?
A. At the parsonage of the Summerfield M. E. church.
Q. Have you any children?
A. Yes, sir; one.
Q. By Mr. Hergesheimer?
A. Yes, sir.
Q. When did you first have any knowledge of the matter which is the subject of this suit?
213 A. In 1891. I think it was between July and August. It was some time in the latter part of summer, but I cannot recollect just the date.

Cross-examination.

By Mr. KELLOGG:

Q. What is your mother's name?
A. Mary A. Becket.
Q. Formerly Mary Ann Remsen?
A. Yes, sir.
Q. George W. Remsen was your grandfather?
A. Yes, sir.
Q. You have heard of him?
A. Yes, sir; I have heard mother speak of him.
Q. You know your grandmother, Mrs. Wetzel?
A. Yes, sir.
Q. How many years have you known her?
A. Ever since I can remember anything at all.
Q. Have you known her intimately?
A. Yes, sir.
Q. It was generally known in the family that George W. Remsen was a Mexican soldier?
A. Yes, sir.

Q. And was in the army when he died?
A. Yes, sir.
Q. And that your grandmother got a pension?
A. Yes, sir.
Q. Do you know whether George W. Remsen left any property?
A. No, sir; I never heard of any.
Q. Did you ever inquire?
A. No, sir.
214 Q. Do you know whether your mother ever inquired?
A. No, sir; I never heard of her speak of any.
Q. You never knew your mother to inquire?
A. No, sir.
Q. She knew that her father was a Mexican soldier?
A. Yes, sir.
Q. And you heard her say that your grandmother got a pension?
A. Yes, sir; I have heard her say that.
Q. This was generally known in the family?
A. I never heard of it until I heard of it in 1891.
Q. I mean it was generally known in the family that he was a Mexican soldier and that your grandmother got a pension?
A. Oh; yes, sir.
Q. You say that you heard of the matter which is the subject of this suit about August, 1891?
A. Yes, sir. I cannot tell the exact date, but it was some time in the latter part of the summer.
Q. Did you hear the family speaking about a man that came from Minnesota here to see Mrs. Wetzel?
A. I heard of it through grandmother.
Q. How long after he had been here did you hear that such a man had been here?
A. I do not know. It was not very long after. I visited my grandmother every three or four weeks.
Q. And she said a man had been there a short time before?
A. Yes, sir.
Q. Well, a month or so?
215 A. Well, I guess it wasn't more than a month, probably six weeks.
Q. Did she say what he had been there for?
A. She just told me he came on and that there was some land that had belonged to grandfather and was sold, but I can't hardly remember what she did tell me. She told me about his being there, and I said I didn't know there was such a thing. She said there was, but it was a number of years back and was never spoken of until that time.
Q. Did she say that this land was in Minnesota?
A. I don't remember that she told me. I believe it was out West.
Q. And that this man had been on?
A. Yes, sir.
Q. And you think that was shortly after he had been there?
A. Yes, sir.

Q. Did she mention the name of the man as Mr. Hendrickson?
A. I think she did, but I am not positive.
Q. You say you visited her every three or four weeks?
A. Yes, sir.
Q. And this was about three or four weeks after this man had been there?
A. Probably six weeks, for I had a sick child at the time and didn't visit her so regularly.
Q. She said that there had been such a piece of land, but it had been a good many years ago?
A. She said there had been, but it was many years ago, and it hadn't been spoken of for a long time. I never heard of it through the family, at all.
Q. Did she say it was a land warrant that she had sold a good many years before?
A. Yes; she talked of it in that way, but I can't recollect what she did say.
Q. You recollect that she spoke of it as a land warrant that she got on account of her husband being in the Mexican war?
A. Yes, sir.
Q. And that she sold it a good many years ago?
A. Yes, sir.
Q. And that it had been located out West?
A. Yes, sir.
Q. Did you inquire particularly about the land?
A. No, sir; I didn't inquire anything about it.
Q. Did you, after that, make any inquiry to locate in regard to the land?
A. No, sir; none at all.
Q. How long after that was it that you next heard of it?
A. Well, I judge it was some few months, probably six months. I heard of it through grandmother. She would speak of it. She would say, "Have you heard any more of it?" And I would say, "No; what should I hear? I don't know anything about it." It may have been only three months.
Q. And then it ran along until August, 1891, when it was explained to you?
A. It was between July and August, I believe.
Q. The first time that this man was here, and when the old lady spoke to you about it, was some time about December or January, 1889 or 1890, was it not?
A. It was not 1889, I don't think.
Q. He was here in December, 1889?
A. Was he?
Q. Yes. Now, was it shortly after he was here?
A. Yes, sir.
Q. And not over six weeks?
A. I don't think so, but it seems to me it was in 1890 that I heard her speak about it.
Q. Well, probably January, 1890?
A. I could not say just the time.

By Mr. PORTER:

Q. Can you remember it by Christmas time?
A. No, I can't remember the time.

By Mr. KELLOGG:

Q. You made no inquiries after that?
A. No, sir; none at all.
Q. By whom was it finally explained to you all over again?
A. Mr. Mayne.
Q. That was when?
A. In 1891.
Q. Was that the time the heirs had a meeting?
A. Yes, sir.
Q. At whose office?
A. Mr. Mayne's.
Q. Between the time that your grandmother first mentioned this to you and this August, 1891, did you see any of the other heirs?
A. None outside of my sister.
Q. Which sister?
218 A. Mrs. Beckman.
Q. Did you talk with her about what you heard?
A. I just said I supposed it would not amount to anything.
Q. You told her what your grandmother told you?
A. She had seen grandmother and heard the same from her.
Q. How long was it after you saw your grandmother that you saw Mrs. Beckman?
A. I didn't see her for probably a month or two months.
Q. When you saw her did you speak to her about it?
A. I asked her if she had heard of it, and she said, "Oh, yes;" but we didn't talk about it after that time, as I didn't think it was worth while talking about it, and I didn't pay much attention to it.
Q. Did you tell her what your grandmother told you?
A. That I can't remember.
Q. But she knew it?
A. She knew about the same as I did.
Q. You talked about it?
A. We just merely spoke of it, and that is all.
Q. Did you see any of the other heirs during that time?
A. No, sir; I don't think I did, for being in the country I didn't visit them much.
Q. Do you know Harriet A. Van Zant?
A. Yes, sir.
Q. Where does she live?
A. That I can't tell you.
219 Q. Has she ever visited you?
A. Not since my mother's death. During my mother's life she used to call occasionally.
Q. So far as you know neither you nor your husband took any pains to look this matter up?
A. No, sir; none at all.

Q. Or took no pains to look up the estate of your grandfather?
A. None at all.
Q. You know that the probate court or the orphans' court is the one where estates are handled?
A. Yes, sir.
Q. Did you or your husband ever go to the orphans' court to see anything about his estate?
A. We never did.
Q. Did your mother ever tell you that your grandmother was appointed her guardian when she was young?
A. I never heard of it. She never spoke of it. I never knew there was anything to be guardian of.
Q. You never inquired?
A. No, sir; I never inquired.
Q. Where did you say you lived?
A. Haddonfield, New Jersey.
Q. Did you have any letters from Mr. Mayne?
A. A few, I believe.
Q. Have you got them with you?
A. No, sir; they were not kept, I guess.
Q. When did you receive those letters?
A. I could not tell you that.
Q. When did you first receive a letter from Mr. Mayne—
220 how long from the time when you first saw your grandmother and she told you about this land warrant?
A. I could not tell; a couple of months probably. I could not tell. Probably it was less time than that.
Q. What did Mr. Mayne write you?
A. Indeed I don't remember anything about that.
Q. It was in reference to the same matter?
A. Yes, sir.
Q. Did you answer the letter?
A. No, sir.
Q. Did he write you again?
A. Yes, sir; he wrote again.
Q. How long after the first time?
A. Not so very long, I guess, but I can't remember, for my husband always got the letters and brought them to me and read them and then disposed of them, and if any answer was required he answered them.
Q. What did Mr. Mayne say in any of those letters?
A. Well, in reference to the meeting he just wrote to us and told us he would like to see us at such a time. In one of them I know he said that we were to meet at his office at such a time.
Q. That wasn't the first letter?
A. I can't remember the first letter.
Q. What was said in some of those letters besides that, that you can remember?
A. No, I can't remember anything else. I can't call anything to mind.

221 Q. Did he state in some of those letters the nature of your claim?

A. I can't remember, I tell you, what was in them.

Signature of witness waived.

Adjourned until 3 o'clock p. m.

425 WALNUT STREET,
PHILADELPHIA, *December* 20, 1892—3 p. m.

C. HOWARD GUILBERT sworn.

By Mr. PORTER:

Q. You were the stenographer who took the notes of testimony on Saturday last at this hearing, were you not?

A. I was.

Q. Have you examined your notes since they have been transcribed to see whether the testimony of Mrs. Wetzel has been taken with accuracy?

A. The first page or two of her testimony was taken by Mr. Haas, and I relieved Mr. Haas and finished the examination of Mrs. Wetzel. I had the notes transcribed and revised them with my notes and found them to be exactly accurate as I had reported them.

Q. Have you any doubt as to the correctness of your transcript?

A. I have not.

222 Q. And you reported just what she said?

A. I did.

By Mr. KELLOGG:

Q. You mean by the first page or two, which you say was reported by Mr. Haas, the first page or two as written out on the typewriter?

A. Yes, sir; Mr. Haas took that.

Cross-examination.

By Mr. MAYNE:

Q. You recognized, did you not, that Mrs. Wetzel was somewhat hard of hearing?

A. I did.

Q. Questions had to be frequently repeated to her.

A. They did.

By Mr. KELLOGG:

Q. You are positive that you reported her correctly?

A. The witness was very easily understood by me and I am positive that I understood what the witness said, and so reported it.

By Mr. MAYNE:

Q. If there was any error, as I understand you, it was from the misunderstanding of the witness as to the question and not the answers as you took them from her?

Objection by Mr. Kellogg as incompetent, irrelevant and immaterial.

A. I took the answers as I heard the witness make them. I cannot say whether the witness did or did not understand the question.

Signature of witness waived.

223 GEORGE L. SCHAEFFER sworn:

By Mr. MAYNE:

Q. Where do you live?
A. 1013 North Front street.
Q. And your profession or calling is what?
A. I am a Methodist preacher.
Q. How long have you been pastor of the Front Street M. E. church?
A. I have been pastor there four years next March.
Q. Did you celebrate the marriage of Daniel C. Beckett and Mary Ann Beckett?
A. No, sir.
Q. Do you know what minister was stationed at the church at the time of their marriage?
A. According to the book it was John W. Arthur.
Q. What book do you refer to?
A. The church record.
Q. Where did you get the record?
A. I found it there when I went there.
Q. Was there any entry in that book of the celebration of that marriage?
A. I believe so (reading from book). "Daniel C. Beckett and Mary A. Remsen, June 29th, 1851. Ceremony performed by John W. Arthur."

No cross-examination.

Mr. KELLOGG: I object to the testimony as incompetent, irrelevant and immaterial.

Signature of witness waived.

224 WALLACE FLETCHER sworn.

By Mr. MAYNE:

Q. You are a clerk in the office of the prothonotary of the county of Philadelphia?
A. Custodian of books in the prothonotary's office.
Q. Have you the original record in the divorce proceedings of Jacob Heyer *vs.* Harriet Heyer, No. 20, of March term, 1864, of common pleas?
A. I have.

Mr. MAYNE: I offer in evidence the record, and ask the examiner to have a certified copy of it made under the act of Congress.

Mr. KELLOGG: I object to the record as incompetent, irrelevant and immaterial.

JAMES L. HINES sworn.

By Mr. MAYNE:

Q. Where do you reside?
A. At Gloucester City, Camden county, New Jersey.
Q. Did you know George W. Remsen and Elizabeth Hopkins?
A. I did.
Q. Were you present at their wedding?
A. I was.
Q. Do you know who celebrated that marriage?
225 A. I think it was Manning Force, pastor of St. George's Methodist church.
Q. Do you know about when that was?
A. I am unable to state exactly, for it has been a long while. I could not tell further than circumstances. It must be in the neighborhood of sixty-three years, from circumstances.
Q. Did you visit Mr. and Mrs. Remsen?
A. Yes, sir.
Q. Where did they live?
A. They lived in a court at the time they were married, running from Second street above Laurel, running east from Second street.
Q. Have you any knowledge of Mr. Remsen's services in the war?
A. No, sir; only my impression is that he was in the Mexican war, but I could not be positive about that. I don't know anything positive and only have that impression.
Q. Have you any knowledge of the marriage of his widow, to Paul Wetzel?
A. I have not.
Q. Did you know Isaac Ballou?
A. I did.
Q. Where did he die?
A. I could not tell.
Q. He was a magistrate?
A. He was a magistrate on Second street above Beaver.
Q. Did you know William F. Small?
A. No, sir; I don't recollect that name.

By Mr. KELLOGG:

226 Q. Ballou is dead?
A. Yes, sir.

By Mr. MAYNE:

Q. Do you know any of Mr. Remsen's children?
A. I do not.

No cross-examination.
Signature of witness waived.

JAMES W. HOPKINS sworn.

By Mr. MAYNE:

Q. What is the character of your business?
A. Carpenter and builder.
Q. Where do you reside?
A. 929 Charlotte street.

By Mr. BULLITT:

Q. Where? In Paris, London or where?
A. In Philadelphia.

By Mr. MAYNE:

Q. Do you know the widow of Paul Wetzel?
A. Yes, sir; she is my sister.
Q. Do you know whether she was married before that or not?
A. Yes, sir.
Q. To whom?
A. George W. Remsen.
Q. Have you any knowledge of his being a soldier in the Mexican war?
A. Yes, sir; and I may say this, that he died during the siege of Pueblo, Mexico, while Col. Childs was besieged there by the Mexican troops.
227 Q. You know his children, of course?
A. Yes, sir.
Q. You knew Laura Beckett, didn't you?
A. Yes, sir.
Q. Who was she?
A. She is a granddaughter.
Q. Who did she marry?
A. She married George W. Beckman.
Q. Were you present at their marriage?
A. I was not present at the marriage.
Q. Have you visited Mr. and Mrs. Beckman?
A. Yes, sir.
Q. At their house?
A. Yes, sir.
Q. Been introduced to him as her husband?
A. Oh; yes.
Q. Do you know about when they were married?
A. Being a business man, I don't pay much attention to that. I could not recollect the time, for it has been some years.
Q. You have seen John Wetzel Remsen out there in the room?
A. That is a son of Mrs. Wetzel.
Q. By which husband?
A. By George W. Remsen, who was killed at Pueblo, Mexico.
Q. You saw Mrs. Mary J. Remsen in the room, did you not?
A. Yes, sir; she is the wife of George W., a son of Mr. Remsen who died at Pueblo.
Q. Did you see Mrs. Harriet Van Zant?

228 A. She is the daughter of Mrs. Wetzel, her oldest daughter. She married a man named Heyer.

Q. Can you identify this lady as Mrs. Mary J. Remsen? (Indicating.)

A. Yes, sir.

Q. You say you know Harriet Heyer?

A. Yes, sir.

Q. Do you know when she was married?

A. I could not recollect the date. I know she married Jacob Heyer.

Q. About what time?

A. I could not locate it. It was prior to the war, though.

Q. Prior to the Mexican war?

A. No, sir; prior to the rebellion; because Jacob enlisted in the 23rd Pennsylvania, and I had his commission issued for him as captain by Governor Curtin.

Q. Then you are very well acquainted with Harriet A.?

A. Yes, sir.

Q. You are her uncle?

A. Yes, sir.

Q. Have you any knowledge as to her ability to write?

A. No, sir; I have not.

Q. Did you ever see her write?

A. Not as I know of.

Q. Have you any knowledge as to the present physical condition of Mrs. George W. Beckman?

229 A. Any more than she is confined to her house. She had a baby a week ago. Her son comes to my house every week, and he reported it.

Q. You are related by marriage in some way, are you not?

A. It is a kind of a mixed-up affair. I am uncle and brother-in-law to two of my sister's daughters. My wife's two brothers married two nieces of mine. It kind of mixes the family up.

Q. As I understand it your wife and Mrs. George W. Beckman are sisters. Who did you marry?

A. I married George Beckman's sister, and then he married my sister's daughter.

Cross-examination.

By Mr. KELLOGG:

Q. Where is Mrs. Van Zant's home at present?

A. I can't tell you that. I don't know. I don't know her residence. She lives here in the city.

Q. You say that George W. Remsen was in the Mexican war?

A. Yes, sir; the United States infantry.

Q. After the war his widow got a pension?

A. Yes, sir.

Q. And a land warrant?

A. Yes, sir.

Q. You knew about that?

A. Yes.

Q. And have known about it for a good many years?
A. Yes, sir; Gen. Small had charge of her affairs.
Q. She sold the land warrant?
A. She sold it.
230 Q. You knew that a great many years?
A. Through Poulson. I know she sold it by report.
Q. It was reported generally among the family that she had a land warrant and sold it?
A. Yes, sir.
Q. And generally known among the children?
A. I knew it.
Q. And it was generally known among the family?
A. I may say here that my father sold his about the same time. He was a soldier in the war of 1812.
Q. You say it was generally known among the family that she sold the land warrant?
A. Yes, I guess it was. I know I knew it. General Small sold it for her.
Q. And Harriet knew it, I suppose?
A. I suppose she did.
Q. You have heard her speak about it, haven't you?
A. No; I never heard the children speak of it. They were too young.
Q. I mean in after years?
A. No; I never heard of it. I believe she sold the land warrant to try and raise the children.
Q. You say your father sold his?
A. My father sold his.
Q. He was in the war of 1812?
A. Yes; it was afterwards, though.
Q. Who told you about this land warrant having been sold—Mrs. Remsen's warrant, I mean?
A. I think, probably, she did, herself.
231 Q. When did you first hear about this claim for this land out West?
A. Well, I paid no attention to it. I think it has been probably two years ago. My sister told me, Mrs. Remsen, somebody called to see her about it, hunting up the heirs of George W. Remsen.
Q. She told you about the time the man came here?
A. Some gentleman called there.
Q. And shortly after he called, she told you?
A. I stopped to see her.
Q. How long before that did she say the man had been there?
A. I can't call to mind. It was a short time, because every week or so I stopped over to my sister's to see the old lady.
Q. Was his name Hendrickson?
A. I do not think I ever heard his name.
Q. Wasn't it three years ago this month?
A. No; I don't think it has been that long.
Q. About the time she told you of this, it was talked up among the heirs, was it, that there was a claim out West?

A. So far as that is concerned I will tell you that there is not much visiting amongst those children at my house.

Q. Did you see them?

A. No; I scarcely ever see them.

Q. Did you see Mrs. Beckman?

A. I saw Laura; but some I see here today I have not seen since 1864.

232 Q. Laura Beckman; did you tell her what you had heard?

A. No.

Q. Did she say anything to you about it?

A. Well, she might have spoken to my wife about it; she never did to me. My sister told me about a lawyer, or whoever the gentleman was, from the West called to see her in reference to the sale of the warrant by Poulson to Mr. Taylor many years ago, but I paid no attention to the matter.

Q. She said a lawyer told her about it?

A. Yes, sir.

Q. And he was from the West?

A. He was from the West.

Q. You saw her within a few weeks after he had been here?

A. Yes, sir.

Q. Did she tell you anything else that he said?

A. Well, as I said before, I didn't tax my memory with it, for I placed very little confidence in it.

Q. How soon after that did Mrs. Beckman know it?

A. I can't say how soon she knew it; because this gentleman, whoever he was, went around to see them all, so I understood.

Q. From whom did you understand that—Mrs. Beckman?

A. Yes, sir; that he had been to see Mrs. Beckman and Mrs. Feedler.

Q. Who else?

A. That lady who was in here, Mrs. Mary Remsen, that he
233 had been to see the different ones, and then George Junior. He had been to see them, but I took no stock in it, at all. I had no interest in it and didn't bother about it.

Q. Mrs. Beckman said this?

A. She said the lawyer had been to see them. I know they were to call some place and give their depositions.

Q. How soon after this man was here from the West was that?

A. When I heard of it?

Q. When Mrs. Beckman said the lawyer went around to see them, how soon was it after the man was here from the West?

A. I didn't tax my memory. It might have been a couple of weeks.

Q. It was only a few weeks?

A. Yes, sir; all the information I got was from my sister.

Q. Shortly after this lawyer came here from the West you heard it, and it was generally known that there was such a claim?

A. That there was an imperfect title to this property which had been sold, or something of that character.

Q. Did your sister tell you what the property was or where it was?

A. No, sir; I never knew where it was located until a few days ago.

Q. I suppose you didn't have any personal interest in it?

A. I had no interest personally, and I told them two years
234 ago, if I am not interrupting you, when they spoke to me about it, I said, "You had better get somebody to go out there and look after it, and if you ain't got nobody if you will give me the information you have I will write to William Ralston, of Minneapolis, a friend of mine, and let him inquire," and they never bothered about it, and I didn't bother any more.

Q. Who did you tell that to?

A. I told it to my sister.

Q. Who was there when you said that?

A. My sister.

Q. Anybody else?

A. Well, my two sisters, Susan and Elizabeth, Mrs. Wetzel.

Q. This was at this time when she told you about it first?

A. When she told me about it I said if they would give me the information about it I would save them expense by writing to Bill Ralston—I always call him Bill—that lives in Minneapolis, and was raised there and came to Philadelphia and worked at carpentering and married a lady here, and then went back; that I would write to him and let him make inquiries about it.

Q. Did anybody write to him?

A. No; I never took any interest because they didn't seem to bother about it, and I had other business and I didn't bother about it.

Q. Did you say anything to Mrs. Beckman about writing out there?

A. No; I just merely spoke to my oldest sister, Mrs. Wetzel.

235 Q. If it was in December, 1889, when this man from the West was here, that was the time that you had your talk with your sister?

A. I do not know when it was, but I think it was a couple of years ago.

Q. It might have been three, might it not?

A. I don't think it has been that long.

Redirect examination.

By Mr. MAYNE:

Q. You don't mean to say that you ever had any conversation with any of the children in reference to this matter?

Objection by Mr. Kellogg as leading.

A. No.

Q. Did you have any information, at all, as to where this land was?

Objection by Mr. Kellogg as leading.

A. No, sir; nothing at all, only what my oldest sister said that this gentleman said that a railroad company was interested in it. Mrs. Wetzel told me that this gentleman who called to see her the first time said that there was a railroad company interested in it, but, as I say, I made no inquiries as I wasn't interested in it.

Q. Do you know whether or not after you had given that advice to employ somebody to look into the matter whether that was done?

A. They said they had employed some one.

Q. And the conversation that you had as relative to the
236 time was when the suggestion was made about employing some one to look after this matter, was it not?

A. Yes, sir.

Q. Prior to this had you ever heard the children speak of knowing that their father was entitled to any land?

A. No, sir; never.

By Mr. BULLITT:

Q. You say they told you that they had employed some one, that they had employed a lawyer to look into this claim?

A. Yes, sir.

Q. What was the name of the lawyer?

A. I don't think I ever asked his name, and I don't think they told me.

Q. Wasn't it Mr. Mayne?

A. It was some gentleman on Walnut street, but I don't remember the name; and I don't know that gentleman's name yet (indicating Mr. Mayne).

Q. Did they mention his name to you?

A. They might, but I didn't tax my memory, as I took no interest in the matter.

Mr. MAYNE: I will admit that I was employed by the Remsen heirs.

Q. At what time did they tell you that they had employed Mr. Mayne or had employed a lawyer? How long ago was it?

A. At the time of the visit of this gentleman from Minneapolis.

Q. You do not know the date of the visit of this gentleman from Minneapolis?

A. No, sir.

237 Q. You say that they didn't mention the name of the lawyer that they employed?

A. No, sir.

Q. But they did tell you within a short time after this gentleman came to Philadelphia from the West that they had employed a lawyer?

A. That they had made arrangements with a lawyer on Walnut street for to prosecute the claim.

Q. Walnut street, here in Philadelphia, Pennsylvania?

A. Yes, sir.

Q. About how long after this gentleman came from the West to

Philadelphia did they tell you that they had employed a lawyer on Walnut street?

A. It might have been two or three months after his visit.

Q. You are not positive as to the time?

A. No, sir; because, as I say, I went to see my sister every week or so, and she may have mentioned it about the time that the gentleman visited her.

Q. Who told you that a lawyer had been employed?

A. My sister.

Q. Mrs. Wetzel, one of the plaintiffs in this action?

A. Yes, sir.

Q. Did any of the other Remsen heirs tell you that?

A. No, sir.

Q. Have you ever had any conversation with any of the others?

A. None except Mrs. Laura Beckman, who visited my
238 house. The rest of them, they are no visitors, and I don't think they ever came to my house except when my daughter was dead.

Q. You are not positive, and do not know how long it was after this gentleman came from the West that Mrs. Wetzel told you that counsel had been employed to represent the heirs; you are not positive as to the time?

A. I could not give the date, for as I say I did not tax my memory about it, but it was shortly after his visit when she told me that they had employed counsel for to look after this matter.

Q. And it was the same time that she told you about this gentleman from the West having been here?

A. I heard of that about a week after his having been there.

Q. And Mrs. Wetzel told you within a very short time after this gentleman from the West had been here, that he had been here, and at the same time told you that counsel had been employed?

A. I think he was there a couple of times to see her.

Q. Mrs. Wetzel told you a very short time after this gentleman from the West had been here in Philadelphia, that he had been here, and at the same time told you that the heirs had employed counsel?

A. She told me that this gentleman had to return home, and had recommended some gentleman on Walnut street, and had left the matter in his hands to attend to in his absence.

Q. That was a very short time after that gentleman had been here?

A. Yes, sir.

239 Q. You don't recollect positively the exact time when she told you that?

A. No, sir.

Q. You cannot give the month, or the date of the month?

A. No, sir; I did not tax my memory. I was not interested, and busy with my own business. I think it was a couple of years ago.

Q. You won't be certain as to when it was?

A. No, sir.

Signature of witness waived.

Mr. BULLITT: On behalf of the Minnesota Transfer Railway Company, I withdraw all objection to the admission in evidence of either the original judgment-roll, or a duly certified copy thereof, in the case of Jacob Heyer *vs.* Harriet Heyer, in the court of common pleas for the county of Philadelphia, of March term, 1864, No. 20.

Mr. KELLOGG: The other defendants also withdraw their objection.

MABEL REMSEN sworn.

By Mr. MAYNE:

Q. You are a daughter of George W. A. Remsen and Mary A. Remsen?

A. Yes, sir.

Q. And reside where?

240 A. No. 2504 Howard street.

Q. How old are you?

A. Twenty-one years of age.

Q. You are represented in this proceeding by Mr. Parkensteiner, as your guardian?

A. Yes, sir.

Q. Had you any knowledge of the matter which is the subject of this suit, prior to that meeting in August, 1891, at my office?

A. No, sir.

Cross-examination.

By Mr. KELLOGG:

Q. What is your mother's name?

A. Mary A. Remsen.

Q. Who was examined as a witness the other day?

A. Yes, sir.

Q. She said that when the gentleman was here from the West, she went over with you to see your grandmother; is that true?

A. I don't know anything about that.

Q. She said that she told you and your brother George about a gentleman being here from St. Paul.

A. Yes, I know there was a gentleman here from St. Paul.

Q. Your mother told you?

A. Yes, sir.

Q. Do you remember when that was?

A. No, sir; I do not.

Q. It was not long before this meeting at Mr. Mayne's office?

241 A. I could not tell you when it was.

Q. You remember your mother coming home and telling you that a gentleman had been here from St. Paul?

A. She told me that; yes, sir.

Q. And that he was here about a land claim? In reference to an old land warrant of your grandfather's?

A. She said nothing about a land warrant. She said a gentleman was here and said there was land belonging to George Remsen.
Q. Where did he say it was?
A. He would not give us any satisfaction where it was.
Q. Did you talk with him?
A. No, sir; I did not.
Q. Your mother did?
A. Yes, sir.
Q. Was your brother George present? Did he hear it?
A. I don't know.
Q. I suppose you have been told that your grandfather was a soldier in the Mexican war?
A. Yes, sir.
Q. You have known that a good many years?
A. No, sir; it is not very long that I know it.
Q. About the time this man was here from the West?
A. Well, that I could not tell you.
Q. Did you ever hear your mother speak of the fact that your grandfather died in the Mexican war?
A. Not until lately.
242 Q. About the time this man was here from the West?
A. I don't know exactly what time it was.
Q. You remember the circumstance of your mother coming home and telling you about this man from the West?
A. Yes, sir.
Q. Did she tell you about the same time that she saw this man?
A. I could not tell you that.
Q. It was the time that he was here?
A. I could not say.
Q. She came home and said that she had seen a man from the West?
A. She said she had seen this man from out there.

By Mr. BULLITT:

Q. You say that your mother told you some time ago that she had seen a man that came on from the West in regard to a certain claim of the Remsen heirs to some property situated out West somewhere?
A. Yes, sir.
Q. You don't recollect the date when she told you that?
A. No, sir; I do not.
Q. But she told you that within a short time after she had seen this man from the West?
A. Well, I don't know when it was.
Q. But just as well as you know it was within a short time after she had seen this man in Philadelphia?
A. I guess it could not have been long.
243 Q. She did not give you any of the details of this conversation that she had with this gentleman from the West?
A. No, sir.

Q. And you don't know what took place between them at that time?

A. No, sir.

Q. You said that he had come on here and had seen your mother, and the other heirs, in regard to certain land situated somewhere out West?

A. Yes, sir; that is what he came for.

Q. Then afterwards you attended a meeting at Mr. Mayne's office, did you not?

A. I don't think I did.

Q. You did not attend that meeting, but you knew the meeting was to be held there? You heard your mother mention it?

A. I don't remember anything about that meeting.

Q. Your mother afterwards, after telling you about meeting this gentleman from the West, told you about the nature of this claim of the Remsen heirs?

A. No, sir; she never mentioned it to me.

Q. Didn't she mention it to you in August, 1891?

A. Yes, sir; I knew it then.

Q. Didn't you know the Remsen heirs, of which you are one, claimed a tract of land which had been located by a military warrant issued to your grandfather, George W. Remsen, for being a soldier in the Mexican war?

A. Yes, sir.

Q. That was in August, 1891?

A. I know it was late in the summer.

244 Q. It was right after this meeting which the heirs had at Mr. Mayne's office?

A. I don't know exactly when it was, but I know it was some time late in the summer.

Q. You knew in the summer of 1891 that your grandfather had received a military warrant, and that that had been located in certain property in Ramsey county, Minnesota, and that the heirs claimed it at that time?

Mr. MAYNE: I move to have that question stricken out, for this reason: It is purely misleading, and counsel are proceeding to question a very young witness, suggesting to her that a land warrant was issued to her grandfather, when they know as a matter of fact that it was not; suggesting to the witness that she was present at a meeting at my office, and that she had heard described the land subject to this controversy.

By Mr. BULLITT:

Q. Within a short time after this interview which was held at Mr. Mayne's office, some one, who was that of the Remsen heirs, told you what the meeting had been held for?

A. I don't remember anything about that meeting.

Q. Didn't you have a conversation with your mother?

A. I never bothered anything about it.

Q. After this meeting had been held in the latter part of the

summer of 1891, did you know, or did anybody tell you, that your grandfather, George W. Remsen, who was a soldier in the
245 Mexican war, was entitled to a land warrant from the United States Government, or that the heirs were entitled to a land warrant from the United States Government?

A. That I don't remember.

Q. Do you know that a military land warrant was issued to the heirs of George W. Remsen, your grandfather?

A. No, sir; I don't know anything about a land warrant.

Q. Do you know anything about the claims of the heirs of George W. Remsen to this land?

A. I don't quite understand it.

Q. Have you ever heard of this claim to this land which is described in this suit?

A. I heard of it just lately.

Q. Didn't you hear of it in the summer of 1891?

A. Indeed I could not tell you.

Q. Don't you know whether you heard of it in the summer of 1891, or not?

A. The first time I ever heard anything about it was this summer a year ago. I have never bothered anything about it.

Q. You have not paid much attention to it?

A. No, sir; I have not.

Q. And what you heard in the summer of 1891 was simply that the heirs of George W. Remsen claimed the land which is described in this complaint, and that the land was in Minnesota?

A. Yes, sir.

Q. In regard to the facts constituting that claim, you know
246 nothing more than it was based on a land warrant issued to the heirs of George W. Remsen, your grandfather?

A. I don't know what. Everything I left to mamma, and I have never bothered anything about it.

By Mr. PORTER:

Q. When did you come of age?

A. The 28th of last May.

Q. Had you a guardian appointed?

A. Yes, sir.

Q. Who was that?

A. Mr. Parkensteiner.

Q. When was he appointed?

A. I don't know.

Q. Didn't you go to court and ask for his appointment?

A. No, sir.

Q. Was it a good many years ago?

A. No, it was not so long ago. Not long before I was twenty-one.

Q. Can you fix the time within a year?

A. I could not fix any time.

Q. Was it this year?

A. To tell the truth I cannot tell you.

Q. Who is Mr. Parkensteiner?

A. I am not acquainted with the gentleman.
Q. Did you ever see him personally?
A. No, sir.
Q. Did you ever sign any paper asking for his appointment as your guardian?
A. I don't know.
247 Q. You cannot remember whether you did or did not?
A. No, sir.
Q. Did you go to court?
A. No, sir.
Q. You have referred to a conversation that you had with your mother shortly after she saw this gentleman who came from the West. I want you to try and fix that date as well as you can. You are younger than some of the witnesses and I trust a little more to your memory.
A. Indeed I could not remember.
Q. Can you fix last Christmas in your mind?
A. Yes, sir.
Q. Can you fix the Christmas before that in your mind?
A. Yes, I can fix every Christmas.
Q. Can you fix the Christmas of 1889? That is when you were 18, or about. Can you remember any gifts that you received at that time?
A. No, sir.

Signature of witness waived.

It is hereby agreed and stipulated that the taking of further testimony in this case on behalf of both the plaintiffs and defendants is hereby adjourned until such a time as is hereafter agreed upon by the parties hereto, such testimony to be taken at such agreed time before Henry R. Edmunds, Esq., of Philadelphia, Penn., and at such other places as may be agreed upon by the parties.
248 It is further agreed that the examiner may send the exhibits and testimony taken before him by express to Oscar B. Hillis, clerk of the U. S. circuit court, St. Paul Minn.

Defendants' Evidence.

JOHN R. TATUM, having been duly affirmed, was examined as follows:

By Mr. KELLOGG:

Q. Where do you reside?
A. Newcastle county, Delaware.
Q. How long have you lived there?
A. All my life. Either in Wilmington or there.
Q. How old are you?
A. I am in my sixty-fourth year.
Q. Did you ever know John W. Tatum in his lifetime?
A. Yes, sir; he was my father.
Q. When did he die?

A. He died in 1866, in the sixth month, June, 1866, and I think on the 15th day. That is my recollection, but I could not say with positive certainty as to the day.

Q. How many children did he leave surviving him?

A. Three.

Q. What are their names?

A. Samuel C. Tatum, John R. Tatum and Hannah Tatum, in the order of their ages.

Q. Are they alive now?

A. Samuel C. Tatum is not. The other two are.

249 Q. Do you remember when Samuel C. Tatum died?

A. No. I am not certain as to the year. I think five or six years ago. I think in the spring he died. I cannot give the year certainly. My impression would be about five years last spring, but I cannot give the year certainly.

Q. (Defendants' Exhibit No. 1, 12–19–'92, H. R. E., shown witness.) What is this instrument?

A. That is the deed for my one-third interest to Samuel C. Tatum.

Defendants' counsel offered in evidence Exhibit No. 1, 12–19–'92, H. R. E., being a certified copy of a deed from John R. Tatum and Louisa R. Tatum to Samuel C. Tatum.

Q. This purports to be a deed of an undivided one-third of the southwest corner of section No. 28, in township 29, north of range No. 23, west of the fourth parallel meridian, containing according to the United States Government survey one hundred and sixty acres, the land being situated in Ramsey county, in the State of Minnesota. Do you remember this transaction?

A. I do.

Q. Did you and your wife make this deed?

A. We did.

Q. What consideration did you receive for it?

A. $3,350.

Q. In what way was it paid?

A. A house deeded to me by my brother and his wife, and the balance in cash.

Q. What amount in cash?

250 A. My impression is now, it was $1,350 for the house and the balance in cash. It was either $1,300 or $1,350 for the house, and the remainder in cash.

Q. When was it paid with reference to the date of this deed?

A. I presume it was paid immediately after.

Q. Was it within a reasonable time of the date of this deed?

A. I suppose so.

Q. At that time did you know anything about the source of the title to this land described in this deed?

A. I knew it came from Pennock Pusey to my father. That is all I know about it.

Q. Had you ever examined the title to it?

A. I had not.

Q. Did you ever see the patent from the Government?
A. I did not.
Q. At that time had you ever heard whether the title came through a land warrant issued to the widow and heirs of George W. Remsen?
A. I have no recollection of ever hearing anything of the kind.
Q. When did you first hear that claim made?
A. Of the claim of the Remsens?
Q. Yes.
A. Within a few months. Within the summer of 1892.
Q. Had you ever heard it claimed or stated that this land was located by virtue of any land warrant issued to Remsen or any one else?
251 A. I have no recollection of hearing anything about it, except it came to my father through Pennock Pusey, until this claim was put in.
Q. That is all you ever heard about it?
A. That is all I ever heard about it until within a few months.
Q. Do you remember of Hannah Tatum deeding her interest in any of this land?
A. After the death of Samuel C. Tatum, Hannah Tatum sold her interest in the remaining land and also in the obligations given to pay her for what had been sold to the estate of my brother, Samuel C. Tatum.
Q. To whom?
A. Eleanor Tatum, his widow, and his children Mary C. Tatum, Amy T. Hilles, and Elizabeth T. Long.
Q. Who managed the business for her?
A. I did. I negotiated the transfer for her.
Q. What considerations did she receive for it?

Objected to, that the deed is the best evidence.

A. $35,000. That is my recollection.
Q. Who managed the business?
A. I managed the business for her.
Q. Was it paid in money?
A. Yes, sir; it was all paid in money, but not all at once. It was settled at the time in money and notes. It has all been paid now.
Q. How long after the transaction was it paid?
A It was paid $10,000 in cash and the balance in instalments of $5,000, semi-annually. That is my recollection.
Q. It was within a few years?
252 A. Yes, sir. It was a recent transaction. It has been closed within a year or so back.
Q. Was it closed more than a year ago?
A. I think it was. About eighteen months. I cannot say.
Q. The first payment was made at the date of the deed?
A. Yes, sir. And $5,000 in semi-annual instalments afterwards. The deed would show.

Q. At the time you negotiated this sale to these grantees did you inform them anything about the title?

A. I did not.

Q. At that time did you know anything more about it than you have testified here?

A. I did not. I never heard of any question of the title until within the last year.

Cross-examination.

By Mr. MAYNE:

Q. As I understand you, you took whatever interest you had in this land in the condition in which it came to you from your ancestor, without making any inquiries at all about it?

A. I did not inquire into the title. I presumed the title was good and made no inquiries.

Q. You never looked at it?

A. I never did.

Q. The patent was recited in the will?

A. No. This property was not mentioned in my father's will. It was part of his residuary estate. He left special legacies, and
253 the rest of his estate to be divided equally between his three children. This was part of the estate. I do not think it was alluded to at all. I do not think it was mentioned in the will.

Q. You had seen the deed from Pusey to your father, had you not?

A. I do not think I ever saw it.

Q. In your conveyance you had described this land as the southwest corner of section 28, 29 north, 23 west?

A. I presume it is described in the deed.

Q. You knew the description was the location of a land claim under the Government, did you not?

A. I presumed it came from the Government, but I had no knowledge of it.

Q. You knew that by the peculiarity of the description, did you not?

A. Yes, sir; if I read it I did. I presume so.

Q. You never looked into the patent?

A. No. I have no recollection of ever making an examination at all.

Signature waived.

Adjourned until 2 p. m.

It is admitted that Isaac Boileau and William F. Small, who were named as witnesses to the certified copy of the assignment of the land warrant No. 28811, being a part of Exhibit No. 4, offered in evidence, are the persons described as Isaac Boileau and
254 William F. Small, by the witness, Harriet A. Remsen, and that they are both dead, and have been for more than ten years.

PENNOCK PUSEY, having been duly sworn, was examined as follows:

By Mr. KELLOGG:

Q. Where do you reside?
A. It is hard to say just now. Wilmington, Delaware, I regard as my present home more that any other place.
Q. What is your age?
A. Sixty-seven.
Q. Were you ever the owner of one hundred and sixty acres of land described as the southwest corner of section 28, township No. 29, north of range 23 west, in Ramsey county, State of Minnesota?
A. Yes, sir.
Q. From whom did you get a deed of that land?
A. Allen Pierse and wife.
Q. Did you know Mr. Pierse personally?
A. Yes, sir.
Q. Is he alive?
A. I do not know certainly. I think not.
Q. Do you know, if he is alive, where he is?
A. I do not.
Q. About how old a man was he in 1854?
A. At a rough guess he was at my age now perhaps. Perhaps not so old. He was an old man.
Q. (Paper handed witness marked Defendants' Exhibit No. 2, 12-19-'92, H. R. E.) What is that?
255 A. Title bond. Bond for a deed.
Q. Whom from?
A. Allen Pierse to myself.
Q. For that property?
A. Yes, sir.

Paper marked Defendants' Exhibit No. 2, 12-19-'92, H. R. E., offered in evidence by defendants' counsel.

Q. (Paper marked Defendants' Exhibit No. 3, 12-19-'92, H. R. E., shown witness.) What is that instrument shown you?
A. This seems to be a copy of the deed from Mr. Pierse and wife to me.

Certified copy of the deed from Allen Pierse and wife to Pennock Pusey of this land, marked Defendants' Exhibit No. 3, 12-19-'92, H. R. E., offered in evidence by defendants' counsel.

Q. What did you pay for that land?
A. $18 an acre, to my recollection.
Q. $2,880?
A. Yes, sir.
Q. In cash?
A. I think I paid him half cash when he gave me the bond for a deed and the other upon receiving the deed.
Q. (Deed shown witness being marked Defendants' Exhibit No.

4, 12-19-'92, H. R. E., being deed from Pennock Pusey to John W. Tatum.) What is that paper?

A. That is the deed itself. It is in my own writing. The body of the deed and the signature are all in my handwriting.

256 Deed marked Defendants' Exhibit No. 4, 12-19-'92, H. R. E., offered in evidence by defendants' counsel.

Q. What did you receive from Mr. Tatum for that land?

A. I borrowed $3,000 of him and I could not pay it and I deeded him the land to pay the debt.

Q. You received the money from him in cash?

A. Yes, sir.

Q. Did you ever know Nathan D. C. Taylor?

A. No, sir.

Q. Did you ever know Henry McKenty?

A. Yes, sir.

Q. I mean the Henry McKenty who deeded this land to Allen Pierse.

A. Yes, sir. That is the same person.

Q. Is he alive?

A. No, sir.

Q. At the time you purchased this land of Mr. Pierse did you know the source of the title?

A. I do not quite understand the question. I had an abstract.

Q. Did that abstract show a copy of the patent from the United States to Nathan D. C. Taylor?

A. No, sir.

Q. What did it show?

A. It showed simply the transfers upon the records. It carried it back to the issue of the patent, which satisfied me.

Q. In about what words would one of these abstracts be?

Objected to.

Q. Have you got the abstract that you had at that time?

257 A. No, sir.

Q. What did you do with it?

A. I do not know. I could not tell where that is at all. It was very short.

Q. Did the abstract contain a copy of any of the deeds in the chain of title?

A. No, sir.

Q. At the time you purchased that land did you know anything about any claim that it was located by virtue of a land warrant issued to the widow of George W. Remsen?

A. No, sir.

Q. Or that the widow and heirs of George W. Remsen had any or made any claim to it?

A. No, sir; I never heard of the claim at all until recently. I never heard their name.

Q. How recently?

A. Since this suit was published.

Q. You never did until the commencement of this suit hear any claim that this land was procured by or through a land warrant?

A. None whatever, except what appeared in the abstract. It showed I think on the abstract.

Q. Did the abstract show anything about any land warrant?

A. No, sir; except simply I think it did show that it was located upon a land warrant.

Q. I show you an abstract. (Paper handed witness.)

A. That is about the style.

Q. Is that what the abstract showed that you had?

258 Objected to.

A. It was not a printed abstract, but it was very similar. That is the general style of it.

Q. Look at the first entry of that abstract.

Paper marked for identification, Defendants' Exhibit No. 5, 12–19–'92, H. R. E.

Q. (The first entry upon paper marked Defendants' Exhibit No. 5, 12–19–'92, H. R. E., shown witness.) Did the abstract you had show anything more than that first entry does?

Objected to.

A. No. It showed nothing more. I think there is one word that was usually used for "land warrant," used the word "located," when it was located by land warrant and when it was purchased by cash "entered."

Q. The word "land warrant"?

A. Yes, sir.

Q. That is the entry of this land?

A. Yes, sir.

Q. Do you recollect as to this abstract?

A. I do not recollect particularly. I do not know that that was invariable, but it was general. "Located" and "entered."

Q. State whether you have any recollection before the commencement of this suit that you knew whether that was located by land warrant or not?

A. I cannot answer. I do not think I did. The only way I should judge it was that I remember examining the abstract and traced it back to the patent issued, and was satisfied and did not go any further. I do not remember whether that patent was
259 issued upon money purchase or upon land warrant issued. I do not remember now what it was.

By Mr. BULLITT:

Q. Did you at any time prior to the commencement of this action know, or had you ever heard that the heirs of George W. Remsen had any interest whatever or claimed any interest whatever in the land involved in this controversy?

Defendants' Exhibit No. 5, 12–19–'92, H. R. E., offered in evidence by defendan-s' counsel.

Objected to.

A. Never.

By Mr. KELLOGG:

Q. Do you know whether the Minnesota & Pacific railroad was ever built across this land?

A. Yes, sir.

Q. In what year was the Minnesota & Pacific railroad built across this land?

A. I won't be absolutely certain, but I think 1862.

Q. Did you ever make any deed to that company?

A. Yes, sir.

Q. Defendants' Exhibit No. 6, 12-19-'92, H. R. E., being a certified copy of the deed, handed witness, and he is asked What is that deed?

Objected to by plaintiffs' counsel, as deed speaks for itself.

A. That seems to be a copy of the deed of right of way that I gave to the company. A strip of land one hundred feet in width.

260 Certified copy of deed, being marked Defendants' Exhibit No. 6, 12-19-'92, H. R. E., offered in evidence by defendants' counsel.

It is agreed that the copies which have been produced and offered in evidence as certified copies may be so considered and used with the same force and effect as if they had been certified under the act of Congress, with leave to the complainants to put in duly certified abstracts of the same records.

Q. Does that railroad remain there to this day?

A. I am not certain about that.

Q. Did it when you were in Minnesota last?

A. I am not certain about that quite. The traveled road I think is maybe a little further west. I think they use that still as a freight road. I have not been there for a number of years, and I do not know what they have done. I have not examined it.

Cross-examination.

By Mr. MAYNE:

Q. You lived in St. Paul at the time you received this conveyance from Allen Pierse and wife?

A. Yes, sir.

Q. And had lived there for how long a period prior to that?

A. From May, 1854, until 1883, continuously, I lived there.

Q. Your abstract showed up to the patent from the Government to this land?

A. Yes, sir.

Q. But you never examined the patent?

A. Never examined it. Never saw it.

261 Q. Or never authorized any one to examine it for you?

A. No, sir.

Signature waived.

HANNAH TATUM, having been duly affirmed, was examined as follows:

By Mr. KELLOGG:

Q. Do you recollect of having an interest in some land near St. Paul?
A. Yes, sir; of course I do.
Q. A quarter section of land?
A. Yes, sir.
Q. The southwest corner of section 28, township 29, range 23, Ramsey county, Minnesota. You recollect that, do you?
A. Yes, sir.
Q. You got it as heir of your father?
A. Yes, sir.
Q. Did you ever have any knowledge about the title or whom it came from?
A. No, sir.
Q. You knew nothing about the title or where it came from?
A. No, sir.
Q. Never have known anything about the title?
A. No, sir.
Q. Did you ever at any time prior to the commencement of this action know that there was any claim made to the land or any part of it by anybody by the name of Remsen or any one else?
262 A. No, sir; never heard of them.

Cross-examination.

By Mr. MAYNE:

Q. You did not know anything about it?
A. No, sir; I did not.
Q. Never made any inquiries?
A. No, sir. My brother attended to it.

Signature waived.

Deposition of Edwin B. Hay, Esq., a witness, taken before Anson S. Taylor, a United States commissioner of the supreme court of the District of Columbia.

Present: William C. Mayne, Esq., for complainants; Frank B. Kellogg and M. D. Grover, Esq., for defendants.

EDWIN B. HAY, being duly sworn, deposes and says (original land warrant No. 28811, being for one hundred and sixty acres (160) under the act of February 11, 1847, being the land warrant in question, being accepted and admitted as the warrant in question): I am an expert in handwriting, having been twenty-six (26) years engaged in such profession, and having testified in the courts and before Congress and the executive departments and in Government

cases have been recognized and accepted as such. I have
263 examined the paper above stated, which is now submitted to me, and upon which appears the name

her
Elizabeth x Remsen
mark

and Harriet A. Remsen, and by the comparison of the two writings I am of the opinion that they were written by the same person.

No cross-examination.

It is admitted by the counsel for the complainants that the signature of Isaac Boileau as a witness to the assignment on the back of said warrant heretofore described, and also to the acknowledgment thereof, is the genuine signature of said Isaac Boilleau, and also the signature of William F. Small as a witness to said assignment is the genuine signature of said William F. Small.

E. B. HAY.

Meeting held at the office of the examiner, Henry R. Edmunds, Esq., No. 425 Walnut street, Philadelphia, Pa., at 2.30 o'clock a. m.

Present: The examiner, Henry R. Edmunds, Esq., William C. Mayne, Esq., for complainants; Frank B. Kellogg, Esq., for defendants; M. D. Grover, Esq., and William W. Porter, Esq., for defendants.

GEORGE W. REMSEN, a witness produced by complainants, duly sworn and examined, testified as follows:

By Mr. MAYNE:

264 Q. Mr. Remsen, you are the son of George W. A. Remsen and Mary J. Remsen, are you not?

A. I am.

Q. What is your mother's maiden name?

A. Mary J. Derbyshire.

Q. Where do you reside, Mr. Remsen?

A. 2317 Brevere street, Philadelphia.

Q. Do you know Mrs. Wetzel?

A. I do.

Q. In what way is she related to you?

A. My grandmother.

Q. And your grandfather, what was his name?

A. George W. Remsen.

Q. Mrs. Wetzel is the widow of George W. Remsen?

A. Yes, sir.

Q. You are a party complainant in the bill brought in the circuit court of Minnesota?

A. I am.

Q. When did you first have knowledge of the adverse occupancy of the land subject to that bill?

A. Near as I can tell it was about the eighteenth of August, 1891.

Q. Did you know Harriet Van Zandt?

A. I did; I know her.
Q. Is she related to you?
A. My father's sister.
Q. Do you know whether she was previously married to her marriage with Mr. Van Zandt?
A. I heard that she was.
Q. To who, Mr. Remsen?
265 A. I believe to Jacob Heyer, I think his name was Jacob, but I am not sure.

Cross-examined by Mr. KELLOGG, on behalf of all the defendants:

Q. Your grandfather was George W. Remsen, was he not?
A. He was.
Q. He has been dead a good many years?
A. He has.
Q. Did you ever hear where he died?
A. Yes, sir; I heard he died somewhere in Mexico.
Q. What was he doing in Mexico?
A. I believe he was a soldier.
Q. You have understood that he was a soldier in the Mexican war?
A. Not till lately.
Q. You never knew until lately that your grandfather was a soldier?
A. I knew he was a soldier.
Q. How many years have you known that?
A. I have known that since I was quite small.
Q. How old are you?
A. I am over twenty-six years of age.
Q. You knew he was a soldier since you were small?
A. Yes, sir.
Q. In what war?
A. I did not know that.
Q. You didn't suppose it was in the war of 1812?
A. Hardly.
266 Q. You are familiar with what wars this country has had?
A. I don't know that I could enumerate all of them.
Q. You knew that it was not the late rebellion, didn't you?
A. I couldn't say positive whether it was or not.
Q. Now as a matter of fact you knew that he was a soldier in the Mexican war?
A. I did not until a few years ago.
Q. How many years ago?
A. I could not say positive how many years ago.
Q. Give us an idea.
A. I have heard so much talk about it, that I cannot remember.
Q. Well you heard it before this case was started?
A. I could not say positive.
Q. You want to be understood as being the only one of all the

heirs that did not know that your grandfather was a soldier in the Mexican war?

A. I do not know anything about what the others heard, I can only answer for myself.

Q. Well you knew he was a soldier?

A. Yes, sir.

Q. And died in the army?

A. Died in Mexico.

Q. Well he was a soldier?

A. Yes, sir; I believe he was a soldier.

Q. That you knew?

A. Yes, sir, I have been told it.

Q. Then you supposed, did you not, it was in the Mexican war. Did you not?

267 A. I did not suppose anything about it, I was too young to know.

Q. You never heard it mentioned during the years of your life until this case was brought, did you?

A. I could not say positive if I did or did not hear.

Q. You knew your grandmother drew a pension did you not?

A. Yes, sir.

Q. And you knew that a good many years?

A. I have known that since I was—I could not say how old I was.

Q. Quite young?

A. Very likely.

Q. You supposed that she drew that pension because of the duty of her husband in some war, did you not?

A. Yes, sir.

Q. Did you know that she got a bounty land warrant?

A. I never knew it until this case started.

Q. Did you ever make any inquiry?

A. I never did.

Q. You have known your grandmother very long, I suppose?

A. Yes, sir.

Q. For a good many years?

A. Ever since I can remember.

Q. How frequently have you seen her?

A. My grandmother lived at our house for quite a number of years.

268 Q. How many years has she ceased living there?

A. As near as I can tell about seven.

Q. You have heard her talk about her husband as having been in the army, haven't you?

A. Very seldom.

Q. I did not ask you how seldom, but I asked you whether you had heard it or not.

A. Yes, sir, she told me when I was small.

Q. Do you remember what she said about it?

A. I could not recall it now.

Signature waived.

Testimony by agreement to be reduced to typewriting four copies, two to Mr. Mayne and one to the other side and the original to be transferred by the commissioner to court.

Mrs. MAGGIE BECKMAN, being duly sworn was examined as follows:

I reside at 2019 Palethrope street, Philadelphia; am a married woman.

By Mr. MAYNE:

Q. To whom are you married?
A. George W. Beckman.
Q. When were you married?
A. The 9th of July, 1878.
Q. You are the daughter of whom?
A. Mary A. Becket, Remsen was her maiden name.
269 Q. Mrs. Beckman you are one of the parties complainants in the bill of equity brought in the eastern district of Minnesota?
A. Yes, sir.
Q. When were you first apprised of the matters subject to that bill?
A. The latter part of August, 1891.
Q. Do you know Harriet Van Zandt?
A. Yes, sir.
Q. Where does she live?
A. She generally makes her home at 2017, Paletrope street.
Q. That is right next door to you?
A. Yes, sir.
Q. Had you any knowledge of her presence here before Mr. Edmunds the examiner?
A. No, sir, I was sick at the time.

Cross-examined by Mr. KELLOGG, on behalf of all the defendants:

Q. You live near Mrs. Van Zandt?
A. Next door.
Q. How long have you lived next door of Mrs. Van Zandt?
A. Very near four years, her daughter moved there about three years ago.
Q. She moved there with Mrs. Van Zandt?
A. Her daughter lives there and her mother makes her home with her daughter, at times she sews away, and then makes that her home. She made her home before that time with her but not in that neighborhood.
270 Q. Then during these three years that you speak about she has made her home with her daughter, next-door neighbor to you?
A. Yes, sir.
Q. Emma F. Hergermeyer is your sister?
A. Yes, sir.

Q. You have known a good many years that your grandfather, George W. Remsen, was a Mexican soldier, did you not?

A. I knew he was a soldier and I knew he died away, and I judged he was a Mexican soldier but I did not know exactly.

Q. Well, what war did you think he was a soldier in?

A. I did not think anything about it; I supposed it was the Mexican war from the date.

Q. Your sister testified that it was generally known in the family, is that true?

A. I suppose it was, my sister was more at home.

Q. Well, you supposed that he was a Mexican soldier, and have so supposed for a good many years?

A. Yes, sir.

Q. You knew your sister came up here and testified, did you not?

A. I knew when she came.

Q. How far does she live from where you reside?

A. I don't know the exact miles; she lives at Hammonton.

Q. How long has she lived there?

A. I don't know the exact time.

Q. Did she ever live near you?

A. No, sir.

271 Q. You remember when a gentleman came here from Minnesota to see your grandmother about a land warrant?

A. No, sir; I only know that one came, I did not know anything about it, I never heard anything about it.

Q. Your sister says that shortly after he was here she talked with you about it, is that true?

A. She did not say anything about the land, she just said that they had been here, that was all.

Q. Who had been here?

A. That she did not tell me, only some man.

Q. For what did she say?

A. That, she did not tell me. She did not tell me the particulars, nothing only that they had been here with reference to some land, that was all.

Q. Where were you when she told you this?

A. In my own home.

Q. Did she say that she had been up to Philadelphia?

A. No, sir; she had been to my grandmother's I believe.

Q. She told you in substance, did she not, that some man had been here from the West, to see about the piece of land, that he claimed belonged to the heirs of George W. Remsen?

A. She told me something about it, but she didn't waste many words upon it.

Q. Did she say to you that it arose out of a land warrant, that your grandfather would have received being in the Mexican

272 war?

A. I don't think that she did, she had to go to make a certain train.

Q. This was shortly after the man had been here?

A. I think it was.
Q. Did you make any other inquiry?
A. I did not.
Q. You knew you were one of the heirs?
A. I supposed that I would be one.
Q. Did you take any pains to look it up?
A. I thought that we would hear of it again.
Q. That was in the fall, either December or January, 1889, was it not?
A. Now I cannot tell whether it was the fall or spring, but I judge it was the fall, I could not tell the month.
Q. It was a number of years ago?
A. No, sir; not a number of years ago.
Q. Tell us the time that the man was here from Saint Paul and seen your grandmother.
A. I think it was shortly afterwards, but I don't know how often.

Signature waived.
Adjourned.

Depositions of witnesses on behalf of the defendants in the above-entitled action, taken, pursuant to the notice and order hereto attached and returned herewith, before Ambrose Tighe, Esq., at his office, in the city of St. Paul, Minnesota, on the morning of Wednesday, the 31st day of May, 1893, *et seq.*

273 W. E. Bramhall, Esq., appeared on behalf of the complainants and Frank B. Kellogg, Esq., appeared on behalf of the defendants.

It is stipulated that the testimony of all witnesses produced before Ambrose Tighe, Esq., the examiner heretofore appointed to take their testimony herein, may be taken in shorthand by Clement B. Birch, a stenographer, and by him reduced to typewriting, the signatures of such witnesses to such depositions being hereby waived, and that such testimony shall have the same force and effect that the same would have if personally taken by said examiner.

CHARLES D. GILFILLAN, sworn as a witness on behalf of the defendants, testified as follows:

Examined by Mr. KELLOGG:

Q. What is your name?
A. Charles D. Gilfillan.
Q. Where do you reside?
A. In Redwood county.
Q. When did you first come to St. Paul?
A. I came to St. Paul in the fall of 1854, but I came to Minnesota in April, 1851.
Q. You came to Minnesota in April, 1851?
A. Yes, sir; I first resided in Stillwater.
Q. You have lived in Minnesota ever since, have you?
A. Yes, sir.

274 Certified copy of deed from Nathan C. D. Taylor to Charles D. Gilfillan, dated April 28, 1854, marked Def'ts.' Ex. 7, and shown witness.

Q. This is a certified copy of a deed from Nathan C. D. Taylor to yourself, of the southwest quarter of section 28, the property in question herein. Was the original of that deed delivered to you by Nathan C. D. Taylor?

A. Yes.

Counsel for defendants offers Def'ts.' Ex. 7 in evidence.

It is stipulated that no objection is made to any deed or document certified to by the register of deeds on the ground that the same is not certified under the act of Congress.

Q. Did you buy that property, Mr. Gilfillan?

A. I did.

Q. At the date of that deed?

A. Yes.

Q. What did you pay Mr. Taylor for it?

A. I paid him $600.

Q. At the time you bought it did you have any knowledge of any claim by the Remsen heirs, or any one else, to this property?

A. No, sir; I supposed the title was perfect.

Mr. BRAMHALL: I suppose you mean by your question, Mr. Kellogg, any actual knowledge?

Mr. KELLOGG: Any actual knowledge; yes.

Q. Is Nathan C. D. Taylor still alive?

A. No, sir.

Q. Were you ever in the land office at Stillwater as a clerk?

275 A. Yes, sir.

Q. What year was that?

A. I was there in 1851, 1852 and 1853, more or less.

Complainants' Ex. 4, being the land warrant in question herein, shown witness.

Q. Do you know what the market value of land warrants known as the Mexican land warrants, like the one in question, was in 1848, 1849 and 1850?

A. Well, they would vary in price. They were worth about seventy cents an acre.

Q. That is, a land warrant for 160 acres would be worth here in St. Paul about $112?

A. Yes; not over that; not exceeding that.

Q. What were they worth in the market in Philadelphia and Eastern cities?

A. Well, there would be a difference of from five to ten dollars apiece.

Q. More or less?

A. Less; in the East.

Q. State whether they had a well-defined market value.

A. Yes; they had a market value, exactly the same as bonds and stocks have nowadays; they were quoted in the market.
Q. They were quoted in the market?
A. Yes, sir, and in the investment papers.
Q. Were they bought and sold to any great extent in those days?
A. Oh, yes.
Q. How were they usually passed?
276 A. Simply by a transfer; they were assigned in blank.
Q. And passed from hand to hand?
A. Yes, sir.
Q. Circulated?
A. Yes, sir.
Q. Do you know the land in question in this case?
A. I did know it; yes, sir.
Q. What was the land worth when you bought it in 1854?
A. It wasn't worth any more than what I paid for it; about $600.
Q. Were you familiar with the value of that land and similar land around it in 1850?
A. No, sir; I wasn't here in 1850.
Q. Well, 1851?
A. I began to get acquainted with the value of land in the summer of 1851.
Q. What was that land worth in 1851?
A. Well, I should suppose it was worth two or three dollars an acre; not over that.
Q. Not over two or three dollars an acre?
A. No.

Certified copy of bond from Nathan C. D. Taylor to Charles D. Gilfillan, dated April 28, 1854, marked Defendants' Exhibit 8, and shown witness.

Q. Prior to your taking the deed of this land did you take any bond for a deed?
A. Yes; it appears so by this; I had forgotten all about it, though.
Q. Defendants' Exhibit 8 is a copy of the bond, is it?
277 A. I think it is.

Counsel for defendants offers Defendants' Exhibit 8 in evidence.

Cross-examination.

By Mr. BRAMHALL:

Q. Mr. Gilfillan, when you state that you had no knowledge of the claim of the Remsen heirs to this land at the time you took the deed therefor a copy of which has been introduced in evidence by counsel for the defendants and marked as their Exhibit 7, I suppose you mean that you had no knowledge that they made any claim to the land, that is, you had never heard, at the time you took your deed, that they claimed any interest in this land?
A. That is what I mean, yes; or anybody else.

Q. This deed which you took for this land you took for the benefit of Mr. McKenty, to whom you transferred it, did you not?
A. I bought it for him; yes, sir.
Q. And you immediately deeded it to him?
A. Well, a short time afterwards; I don't know exactly when.

Redirect examination.

By Mr. KELLOGG:

Certified copy of warranty deed from Charles D. Gilfillan to Henry McKenty, dated April 28, 1854, marked Defendants' Exhibit 9 and shown witness.

Q. Is that a copy of the deed that you gave Mr. McKenty?
A. I think it is; yes, sir.
Q. How much did Mr. McKenty pay you for that?
278 A. He gave me a hundred dollars for the transaction; that is what I got out of it; and I paid $600, so it cost McKenty $700.
Q. Paid in cash, was it?
A. He paid me $50 in cash and gave me a gold watch.
Q. I mean the $600?
A. $600 cash, yes; Mr. Taylor got that cash.

Counsel for defendants offers Defendants' Exhibit 9 in evidence.

Counsel for defendants also offers in evidence a certified copy of deed from Henry McKenty to Allen Pierse, dated May 22, 1854, being a deed of the property in question.

Marked Defendants' Exhibit 10.

It is admitted that John W. Tatum died subsequent to receiving a deed of this property, in 1860; that his estate was probated in Ramsey county, Minnesota, and that the property in question was, by final decree under the will, vested in John R. Tatum, Samuel C. Tatum and Hannah Tatum, one-third each, and that they have since conveyed the same to various parties, excepting a right of way conveyed to the Minnesota and Pacific Railroad Company by deed which has heretofore been introduced in evidence.

SIMEON P. FOLSOM, sworn as a witness on behalf of the defendants, testified as follows:

Examined by Mr. KELLOGG:

279 Q. When did you first come to St. Paul, Mr. Folsom?
A. On the 25th of July, 1847.
Q. Have you lived here ever since?
A. This has been my post-office address ever since.
Q. You have lived here most of the time since 1847?
A. Yes, most of the time; I have been absent some.
Q. Did you hear the testimony of Charles D. Gilfillan?
A. Yes.
Q. Are you familiar with land warrants like the one in question herein?
A. Yes, sir.

Q. What was the market value of land warrants of that kind in 1847 and up to 1850?

A. From 1847 to 1850 I think they averaged about $125 for a warrant of 160 acres.

Q. What were they worth in the Eastern cities, Baltimore, Philadelphia and New York?

A. They were reported about ten or twelve per cent. less.

Q. Did they have a well-defined market value?

A. Yes; they had a market value.

Q. Were these warrants generally circulated in the market by blank assignment?

A. Yes; blank assignment.

Q. What do you mean by that? An assignment in writing made on the back of the warrant?

A. Yes.

280 Q. With the name of the grantee left blank?

A. Yes, sir.

Q. That is the way it was usually done?

A. Yes.

Q. And they passed from hand to hand, current in the market, did they?

A. Yes.

Q. Do you know the real estate in question herein?

A. Yes.

Q. Were you familiar with its value from 1848 to 1850?

A. Yes. I lived close by it; I had a place within a half a mile of it; I had a farm.

Q. What was this land worth at the time it was located and patented, in 1848 and 1850?

A. Well, it wasn't worth more than the price of the land warrant; about a dollar and a half an acre; they could have bought it for that at private entry.

Q. Do you remember whether the Minnesota and Pacific Railroad Company, now the Great Northern, ever built its road across this land?

A. Yes, sir; it was graded across it in 1848—I mean 1858.

Q. When did it build its track?

A. It built its track in 1862, some time in June.

Q. I will ask you if that track of the Minnesota and Pacific, subsequently the St. Paul and Pacific, has been there ever since?

A. The track was put down some time in June, 1862; it

281 was used as a railroad track, and was the only one across any property in that neighborhood up to 1876.

Q. It has been used as a railroad track ever since, hasn't it?

A. It was sold to the transfer company; I don't know what they do with that track now.

Q. Well, it is there yet?

A. The track is there.

Q. When did this land commence to increase in value from this price that you give in 1848 and 1850?

A. Directly after 1849 and 1850 property increased in value considerably; outside lands had increased in value considerably.

Q. Until what time?

A. Until 1857, they constantly increased in value; gradually increased.

Q. Then how was it for a number of years?

A. Dead as a door nail; no sale for anything; you could hardly mortgage it for enough to pay the taxes.

Q. Then how many years did it remain like that?

A. There was a little revival after 1870, and then there was a fearful panic in 1873, and everything was at a standstill; the next year it began to go up again, and went on until we had the biggest boom the world ever heard of.

Q. When was that?

A. That ended four or five years ago.

Q. For ten years after 1857 there was no sale for such property at all, was there?

A. Very little; very little sale.

282 Cross-examination.

By Mr. BRAMHALL:

Q. Mr. Folsom, the depression which occurred in property in St. Paul, beginning in 1887, has continued, to a greater or less extent, down to the present time, hasn't it?

A. I don't think it is a great deal better now.

Q. There has been very little sale of real estate here since 1887, hasn't there?

A. Well, I don't know, only what I have seen in the newspapers. I see a few city transfers; I don't see many outside transfers; I doubt if there has been much sale.

Q. By outside transfers you mean transfers that would include this class of property?

A. Yes; this class of property.

JOHN B. SANBORN, sworn as a witness on behalf of the defendants, testified as follows:

Examined by Mr. KELLOGG:

Q. How long have you lived in St. Paul, General?

A. It will be thirty-nine years next December.

Q. That would make it since 1854?

A. Since 1854.

Q. Do you know the property in question herein?

A. I have a general knowledge of it.

283 Q. This 160 acres?

A. Yes.

Q. State how the property increased in value from 1854 down to the present time, generally.

A. Well, in 1854 there was a good market price for land in that vicinity, and that continued down to August and September, 1857;

then there was no market until 1868 or 1869; then for four years it would sell for what it was worth—in 1872 and 1873 for more than it was worth; then there was another crash, and there was no market value for the land until about 1879 or 1880; then it commenced to rise, and the rise was immense; the market value became very great in 1887—I should imagine as high as twenty-five hundred or three thousand dollars an acre; and from that time on there has been a depression in real estate that has been constant and continuous; I am inclined to think that the decline in market values, has been constant from that time to the present.

Q. For ten years after 1837 was there any sale for real property?

A. There was no sale at all; it could be applied, to some extent, in payment of debts, when a creditor could get nothing else.

Q. I suppose its intrinsic, real value has increased gradually all these years?

A. It has gone along gradually all the time.

Cross-examination.

By Mr. BRAMHALL:

Q. General, this property is situated about how far from the St. Paul post-office?

284 A. It is about four miles from the post-office of St. Paul; from three and a half to four miles.

Q. Isn't it a little further than that?

A. I am speaking from my recollection; I believe there are eight or nine sections between this city and old St. Anthony, and this land was about midway.

Q. What value did this property reach in 1857?

A. In 1857 this property reached a valuation of from fifty to a hundred dollars an acre.

Q. Fifty to a hundred dollars an acre?

A. Yes.

Q. Then, in 1857, it dropped, and you say there commenced to be a sale for it again in 1868 and up to 1873. What was the value of this class of property in that time?

A. From one to two hundred dollars an acre.

Q. Both the value which it reached in 1857 and from 1868 to 1873 was a speculative value, more or less, wasn't it? There were no improvements out there, and you couldn't use the land for any purpose that would bring in that much income from it, could you?

A. Yes; the market value was speculative.

Q. The country wasn't filled up anywhere around there, was it, at that time?

A. In 1857 the nearest buildings (that is, any number of them) were about a little lake, which has now disappeared; there were six or eight houses, and they were within about two miles; between 1857 and 1867 they were all abandoned, and brought in to town.

285 Q. Then there were no houses any nearer than these six or seven, in 1857, to this property?

A. Nothing nearer.

Q. From 1868 to 1873 it wasn't built up to amount to anything, was it?

A. No.

Q. The improvements which have been made in that vicinity have been made since 1885, mostly?

A. Yes; I forget the year they built at Macalester. There was no village population—not even a suburban city population—until the time you speak of in your question.

D. M. SULLIVAN, sworn as a witness on behalf of the defendants, testified as follows:

Examined by Mr. KELLOGG:

Q. What is your name?

A. D. M. Sullivan.

Q. What is your business?

A. I am superintendent of the Minnesota Transfer Railway Company.

Q. One of the defendants in this case?

A. Yes, sir.

Q. How long have you been such superintendent of the Minnesota Transfer Railway Company?

A. Since February, 1883.

Q. When was the transfer established? I mean by that, when did they buy the property and commence to improve it?

286 A. I think it was in 1881 that they commenced; 1880 and 1881, I think. I think they commenced grading in 1880.

Counsel for defendants offers in evidence certified copy of a deed from Samuel C. Tatum, *et al.* to the St. Paul, Minneapolis and Manitoba Railway Company conveying the westerly sixty acres of the property in question herein, dated May 18, 1880.

Marked Defendants' Exhibit "11," and shown witness.

Q. Is that a deed of what is known as the transfer property?

A. Yes, sir.

It is admitted that this westerly sixty acres, by various and sundry mesne conveyances from the heirs of John W. Tatum, was conveyed to the defendant, The Minnesota Transfer Railway Company, and that said company acquired its title within a year from the date of Defendants' Exhibit "11."

Q. What improvements have the Minnesota Transfer Railway Company upon this westerly sixty acres?

A. Its value, or the character of the improvements?

Q. What is the nature of the improvements?

A. Tracks, warehouses, stock yards, derricks, platforms, scales—everything of that kind.

Map of the Minnesota transfer marked Defendants' Exhibit "12" and shown witness.

Q. State whether this is a correct map and shows the location of this property and the tracks and buildings upon the property.

A. Yes; it does.

287 Q. Is the property within the four corners marked with red ink N. W. cor. N. E. cor. S. W. cor. and S. E. cor. on this map the sixty acres that belongs to the Minnesota Transfer Railway Company?

A. Yes, sir.

Q. State when the transfer company put these improvements upon this property.

A. I think that most of these track improvements were put on as early as 1881 and 1882—a great deal of them; and since then, at various times, several additions were made. A great part of the improvements were put on in 1881 and 1882, and from that on, almost every year.

Q. I see on this map a long building, marked freight-house.

A. Yes, sir.

Q. State whether a part of that freight-house is upon this property.

A. Yes; the line runs through the freight-house, you will observe.

Q. Right east of the freight-house are some lines and check-marks, indicating enclosures; what are those?

A. Stock yards.

Q. The property which is known as the stock yards is that property which I have just marked stock yards in red ink, is it not?

A. Yes.

Q. What other buildings, if any, are there on the transfer company's property?

A. You are speaking of the sixty acres?

Q. Yes.

A. Nothing but what I have mentioned; warehouses, stock
288 yards, tracks, scales, platforms, derricks, and all the appurtenances.

Q. What was the value of the improvements placed upon this sixty acres at the time of the bringing of this suit, in the summer of 1892?

A. About $231,000, or a little over.

Q. And you think that more than half of the value of these improvements was placed on the property along in 1882 and the balance from that time on to the present?

A. Well, I couldn't say positively.

Q. Well, about what proportion, do you think?

A. Very nearly that, I think; that is, in the way of tracks; I wouldn't be positive about that, though. The warehouse was built in 1881 or 1882.

Q. The warehouse was built when?

A. In 1882.

Q. When were the stock yards built?

A. They were built since then.

Q. At the time these improvements were placed on this property

did you, as an officer of that company, have any knowledge of any adverse claim to the property, or any claim whatever, by the heirs of George W. Remsen, these complainants?

A. No, sir.

Q. When did you first hear of any such claim?

A. I think some time last summer.

Q. At the time this suit was brought?

A. Yes.

Q. As far as you know did the company have any such notice?

A. I never heard of any.

289 Cross-examination.

By Mr. BRAMHALL:

Q. Mr. Sullivan, when you say you had no knowledge of the claim of the Remsen heirs to any interest in this property and that the officials of the transfer company, so far as you know, had no knowledge, I suppose you mean by that simply that you had not heard any one say that they had any claim to it?

A. To be sure.

Q. This $231,000 that you have given as the value of the improvements of the transfer company upon the sixty acres represents the first cost of the various improvements that the transfer company made on this property up to the time of the beginning of this suit, does it not?

A. Yes.

Mr. KELLOGG: In your opinion were the improvements worth that at the time you speak of—at the time of commencing this suit?

WITNESS: Yes, sir.

Mr. KELLOGG: Have you added the items of expense in keeping them up from year to year?

WITNESS: No.

Q. Mr. Sullivan, some of these tracks that are represented on this map have been down and used for some time, haven't they?

A. Yes, sir.

Q. And this freight-house has been used for some time?

A. Yes, sir.

Q. And the stock yards, derricks, platforms, and so on?

290 A. Yes, sir. Of course, all the tracks that have been worn out have been replaced with new material.

Redirect examination.

By Mr. KELLOGG:

Q. The blue lines on this map indicate what? Are they tracks?

A. Yes, sir.

Q. They indicate tracks?

A. Yes.

Q. Does each line indicate a separate track?

A. Yes.

Counsel for defendants offers Defendants' Exhibit "12" in evidence.

Objected to for any other purpose than merely to show that improvements to a large value had been made upon this property by the transfer company previous to the bringing of this suit.

J. L. LOVERING, sworn as a witness on behalf of the defendants, testified as follows:

Examined by Mr. KELLOGG:

Q. What is your name?
A. J. L. Lovering.
Q. And you live in the city of St. Paul?
A. Yes, sir.
Q. How long have you lived here?
A. Going on eleven years.
Q. Have you bought and sold real estate on the quarter section of land in question in this suit?
A. Yes, sir.
291 Q. You owned, at one time, part of that quarter section?
A. A portion of it; yes, sir.
Q. State whether you know the value of that quarter section of land at the present time, without the improvements on it, from 1885 down to the present time.

Mr. BRAMHALL: Do you mean the transfer property also?
Mr. KELLOGG: Yes; the whole thing.

A. I think I do.
Q. You think you do; and have known the values during that time?
A. Yes, sir.
Q. Do you remember when this suit was brought, about one year ago?
A. Yes, sir.
Q. What, in your opinion, at that time, was the entire quarter section worth, without the improvements?

Mr. BRAMHALL: What time does "at that time" refer to?
Mr. KELLOGG: The time the suit was brought.
Mr. BRAMHALL: That is objected to as not a proper basis of valuation.

Q. Please answer the question.
A. Well, I figured the thing up, and, from my experience and my sales, I estimate the value of the property, $1,177,500.

Mr. BRAMHALL: That is objected to on the ground that it
292 is not a proper basis on which to give valuation, and, for that reason, I move that the answer be stricken out.

Q. You have bought and sold property on this section and in that vicinity during these years?
A. Yes, sir.

Q. Is the property worth that at the present time?
A. I think it is.
Q. State whether the property increased in value from 1886 and 1887 down to the time of the bringing of this suit.
A. I think it did.
Q. From December, 1889, to the time of bringing this suit, which was about June, 1892, state whether this property increased in value.
A. I think it did.
Q. Then, has the property decreased or stood still in value during any time from 1887 down to the present time, in your opinion?
A. No; I think it has increased.

Page 16 of volume 2 of Donnelly's Atlas of St. Paul, being a map of the property in question herein, was then marked Defendants' Exhibit 13 and shown witness.

Q. Did you ever own the property marked on this plat, Exhibit 13, as Lovering's factory, warehouse and transfer property?
A. I did, sir.
Q. The entire strip?
A. Not the entire strip; I owned blocks 1, 2 and 3.
293 Q. I notice that lot 21, block 2, is marked in yellow. What does that indicate?
A. Well, I don't know about that. That is a house that has been put there since I sold the lot. It is a small lot, facing east.
Q. It indicates a house?
A. It indicates a house.
Q. That marked red is what?
A. That is William H. Deering's warehouse.
Q. And the other lots and pieces of land marked in yellow indicate what?
A. Buildings.
Q. Do you know anything about those buildings yourself?
A. That indicated here by the yellow mark is property belonging to Mr. Shepard—a warehouse.
Q. And what are these immediately south of block 3, marked in yellow?
A. Those are wooden buildings—residences.
Q. Do you know the value of the improvements placed on all the property that you once owned there?
A. Yes, sir; I think I do.
Q. What is the value of the improvements on all the property that you owned there?
A. From five to seven thousand dollars.

Cross-examination.

By Mr. BRAMHALL:

Q. Mr. Lovering, you are in the boot and shoe business, aren't you?
A. Yes.

294 Q. And, while engaged in that business, you have been speculating in property?

A. Some.

Q. And, while speculating in property, you acquired the title to blocks 1, 2 and 3, of Lovering's factory, warehouse and transfer property, being a portion of the property in question herein?

A. Yes.

Q. At the time of the bringing of this suit you owned a considerable portion of that property yet, did you not?

A. Yes, sir.

Q. Which property was for sale at that time?

A. Some of it was.

Q. Well, you were willing to sell the property you had at that time if you got your prices for it?

A. Yes.

Q. And you are willing to do so yet?

A. Yes.

Q. When you say this property is worth as much as and more than it was in 1885 and 1887, you mean intrinsically worth, do you not?

A. Wel', do I understand what you mean by intrinsically?

Q. Do you mean, when you say that this property is worth now as much as it was in 1885 and 1887, that it has a market value at the present time equal to what it had in 1887?

A. Yes, sir; to a man needing that kind of property.

Q. Is its market value as much now as it was in 1887?

295 Can you put it on the market and sell it for as much now as you could then?

A. I don't think there has ever been a time when the property could be put on the market and sold to the same advantage that it could be sold to a purchaser who wanted it. Those are the customers we always sold to.

Q. Well, that is true of every piece of property. But do you think, Mr Lovering, that this property has risen in value since 1887, when all the rest of the property in St. Paul has depreciated, according to the testimony given in this case?

A. For the purpose it is used for I think it has.

Q. Do you think that this is an exceptional piece of property?

A. There is nothing like it; no, sir.

Q. You think it is an exceptional property?

A. Yes.

Q. You think that Midway Heights, as residence property, is an exceptional piece of property, and that that property would naturally rise during the whole time that all the rest of the property in the city was depreciating?

A. I think it has steadily advanced.

Q. That is not an answer to my question.

The last preceding question was then repeated by the stenographer, as follows: "You think that Midway Heights, as residence property, is an exceptional piece of property, and that that property

would naturally rise during the whole time that all the rest of the property in the city was depreciating?"

296 A. I am not testifying that all the property in St. Paul is depreciating.

Q. Well, I will ask you if property in St. Paul, as a rule, will sell for as much now as it would sell for in 1887?

A. Some of it will.

Q. But you know that, as a rule, property in St. Paul has depreciated in value?

A. Some of it has.

Q. I am asking you as to the rule. Now you understand these questions; answer them, please.

A. I think that may be so, but there are many exceptions.

Q. That is very true; but I ask you for the rule. As a rule you think that is so, do you not?

A. With exceptions, that may be so.

Q. Well, then, it is the rule, isn't it, and it has exceptions? Now, is this Midway Heights good for anything except residences at the present time? Is it used for anything except residences?

A. Yes; there are some warehouses.

Q. In Midway Heights?

A. No, not in Midway Heights; across the street.

Q. The property in Midway Heights, so far as it has been improved at all, has been improved purely for residence purposes, hasn't it?

A. There are some stores there.

Q. Well, there are such little stores as would naturally be required to supply the necessities of a residence district—grocery stores, butcher shops, and stores of that kind?

A. Yes, sir.

297 Q. In the neighborhood of this Minnesota Transfer property there is a great deal of other property that can be used for residences, is there not?

A. Not so extensively as it is used there.

Q. Well, isn't there a good deal of other property?

A. There is other property adjoining it, but this is the best residence portion of anything in the immediate vicinity.

Q. But there is other property around this Minnesota Transfer property that can be used for residence purposes, is there not?

A. I don't think there is; a good deal of it is low ground.

Q. How far is Union Park from Midway Heights?

A. Well, it is quite a little distance.

Q. Isn't Union Park right across the street from Midway Heights?

A. I think not.

Q. Do you know that it is not?

A. Well, there is quite a distance between them, and lumber yards, and trackage, and sheep pens, and so forth. It is a third of a mile.

Q. It isn't one-third of a mile from Midway Heights to Union Park, is it?

A. Well, something like that.

Q. The property to the west of the Minnesota Transfer property, excepting a small strip that is used for railroad purposes, connected with the transfer, is practically vacant property also, is it not?

A. Some manufacturing.

Q. Well, I said that excepting this strip it is practically
298 vacant property through there, isn't that true? There may be an occasional building (I suppose there is), but it is practically vacant property, isn't it?

A. Well, if you include the park there, there is a good many residence houses.

Q. I say immediately west, and towards Minneapolis. Is St. Anthony Park immediately west of the transfer?

A. St. Anthony Park is west. Mr. Pratt's warehouse and property is immediately west.

Q. St. Anthony Park is not solidly built up, is it, Mr. Lovering?

A. Not solid, I think.

Q. Are there not more vacant lots in that portion of St. Anthony Park, immediately west of that property than there are occupied lots?

A. Well, there may be.

Q. Don't you know that it is so?

A. I could not testify to the exact facts, Mr. Bramhall; I shouldn't be surprised if there were.

Q. Mr. Lovering, when you speak of the value of this property without any improvements on it, what value did you put upon Midway Heights lots, on an average?

A. I valued it by the acre.

Q. What valuation per acre did you put on it?

A. I valued it, as a whole, at $5,000 an acre.

Q. How much of a valuation did you put on Midway Heights property?

A. $325,000.

Q. How much does that come to, an acre, on Midway Heights?

299 A. That would be $5,000 an acre. Sixty-five acres.

Q. You put a valuation of $5,000 an acre on Midway Heights property. Now, Mr. Lovering, supposing that this property owned by the Minnesota transfer had been entirely unoccupied—that there was not a track upon it—that it was not used for any purpose whatever—that it was a vacant piece of property—do you still think that Midway Heights would be worth $5,000 an acre?

A. Oh, I think that the location of the property, and the immediate surroundings, and the business around it, have helped to make the value that it sells for.

Q. That is not an answer to my question, Mr. Lovering. I ask you, if this Minnesota Transfer property were absolutely vacant, had nothing on it, whether you think the market value of Midway Heights property would be $5,000 an acre?

A. Well, wouldn't it have the same effect to take away the other buildings around it and improvements adjoining it?

Q. That is not my question, Mr. Lovering. I am not setting myself up as a real-estate expert, and you are. I ask you, specifically, if that piece of property were vacant, and there was not a thing on it, what you think would be the market value of the Midway Heights property, per acre?

A. Well, it would reduce the value of the property, the same as it would to take away the other improvements around it,
300 about it, and adjoining it—both Merriam Park, Union Park and all the other settlements and improvements in that vicinity.

Q. You think that if the property owned by the Minnesota Transfer Company were an absolutely vacant piece of property it would decrease your estimate of the value of the Midway Heights from $5,000 an acre—it would be less than that?

A. If there were no improvements anywhere around there, of course.

Q. Well on the Minnesota transfer alone, I am asking you—if that were absolutely vacant—if there were no railroad tracks or improvements upon that land whatever?

A. Well, that wouldn't affect the residence property.

Q. It would not?

A. Midway Heights would still be worth $5,000 an acre.

Q. Do you know where most of the people who have built houses upon Midway Heights work?

A. Well, I haven't talked with them all, but I understand that some work in the city and some are employed in the Midway district.

Q. Have you talked with any of them who live there as to where they work?

A. I know some who work in both places.

Q. Some are working for the Minnesota Transfer Company?

A. Yes, sir.

Q. Do you know how many?

A. No.

301 Q. You are interested, are you not, in having the value of this property out there maintained?

A. No more than any other property-owner.

Q. Well, you are interested, as a property-owner, in having values maintained?

A. I am, as a whole, all over the city.

Redirect examination.

By Mr. KELLOGG:

Q. How much property do you own out there yet?

A. I don't own nearly as much as I did.

Q. Do you know how much you own now in proportion to what you did own?

A. About one-sixth of what I did.

Q. Do you know the line known as the interurban line?

A. Yes, sir.

Q. That is the double-track electric road from here to Minneapolis?

A. Yes, sir.

Q. How far from this property does it run?

A. Oh, from a quarter to a third of a mile.

Q. About how far is Union Park from this property?

A. About the same distance.

Q. And Merriam Park?

A. Still further.

Q. How much further?

A. I don't know just how far; it is across Union Park. The map will show.

Q. How far is Hamline?

A. I think Hamline adjoins it on the east.

302 Q. This property, then, is situated right between the two cities, and in the district of the greatest improvement in the last five years, isn't it?

Mr. BRAMHALL: That is a leading question, but go ahead.

A. It is.

DAVID C. SHEPARD, sworn as a witness on behalf of the defendants, testified as follows:

Examined by Mr. KELLOGG:

Q. Did Shepard, Winston & Co. ever own any property, and do they now, on the southwest quarter of section 28, on which there are certain warehouses—the block of land immediately north of block 3 of Lovering's property?

A. Yes, sir; two acres there.

Q. The two acres indicated on the map immediately north of block 3 of Lovering's factory, warehouse and transfer property?

A. Yes.

Q. When did you buy that, Mr. Shepard?

A. Well, I should have to refer to the deed to find out. It was six or seven years ago.

Q. What improvements have been made, including the improvements of Mr. Winston, and all, on those two acres of land?

A. Well, the improvements were substantially all made before the property was subdivided. Winston Bros. now own the north one-third, and the firm of Shepard, Sims & Co. own the south two-thirds. The improvements were substantially all made be-

303 fore the division. They have made a little; I don't know how much. We built a large warehouse, a rectangular building, about sixty feet wide, a car-repairing shop and two large barns, and we graded the entire property to a suitable grade for use in connection with the railroad.

Q. When were these improvements made, Mr. Shepard, as near as you can tell?

A. Well, the year we bought it; most of them were made that

summer. We bought it in the spring and most of them were made in the summer.

Mr. BRAMHALL: They were all made before June, 1892?

WITNESS: So far as I know—so far as we have any interest in it—they were. Winston Bros. may have done something.

Q. Just give us the total cost of the improvements.

A. The cost of the buildings and grading was $5,930.83. That is the cost charged on our books.

Q. How much of that was for grading?

A. I couldn't divide it here, but it could be done at our office. My recollection is that the cost of grading was about $2,000; somewhere about that sum; and we have expended on buildings since the division, $32.74.

Q. Were the buildings worth that, in your judgment?

A. Yes, sir; they were built economically—built for actual cash cost.

Q. And that includes all the buildings you have on the property?

304 A. That includes all the buildings that Winston Brothers and ourselves have. The grading applies to both, you understand, and is not separated on our books. To get the cost of the improvements you would have to add what Winston Brothers have done since we divided it. They have done considerable, to my knowledge. They have converted what were rough barns into storage houses and spent a good deal of money on them, I think.

Q. Do you know about how much?

A. I should have to guess.

Q. Give us an estimate.

A. I should say they have spent about $500. They can answer that better than I can.

Cross-examination.

By Mr. BRAMHALL:

Q. When did they make those improvements?

A. That was after the division.

Q. Before this suit was commenced?

A. Yes; before this suit was commenced; two or three years ago.

Redirect examination.

By Mr. KELLOGG:

Q. Before the commencement of this suit, did you or Shepard, Winston & Co., or the present company, so far as you know, ever have any knowledge of any claim by the Remsen heirs or anybody else, to the property?

A. No. We had our title examined by Mr. Ingersoll, the 305 attorney, and he passed it as perfect. We bought it relying upon his examination.

Recross-examination.

By Mr. BRAMHALL:

Q. When you say, Mr. Shepard, that you had no knowledge of the claim of the Remsen heirs, you mean that no one had informed you that the Remsen heirs claimed any interest in the property, do you not?

A. That is what I mean; or anybody else for that matter.

Q. You mean that no one informed you that the Remsen heirs claimed any interest?

A. I mean that no one informed me—they or any one else.

JAMES J. HILL, sworn as a witness on behalf of the defendants, testified as follows:

Q. Your name is James J. Hill?

A. Yes, sir.

Q. And you reside in St. Paul?

A. Yes, sir.

Q. And you are the president of the Great Northern railway?

A. Yes, sir.

Q. Do you know the westerly sixty acres of the southwest quarter of section 28, a part of the property in question herein, known as the Minnesota Transfer property?

A. Yes, sir; I do.

306 Q. Did you buy that property for the transfer company?

A. I bought it before the transfer company was organized, and with a view of organizing the transfer company.

Defendants' Exhibit 11, being a certified copy of the deed from the Tatum heirs to the St. Paul, Minneapolis and Manitoba Railway Company, shown witness.

Q. Is that a copy of the deed that you received for that property at the time you bought it, Mr. Hill, as far as you know?

A. As far as I know, that is a correct copy.

Q. Did you buy it at or about the date of that deed?

A. Yes, sir; about that time.

Q. What did you pay for the property?

A. The consideration is set forth in the deed; I think that is the correct consideration. Something less than $200 an acre.

Q. $11,540. At the time you bought this property, did you have any knowledge of any claim by the heirs of George W. Remsen, or any one else, to the property?

A. None whatever.

Q. Before the commencement of this suit did you ever have any knowledge of any adverse claim by any one to the property?

A. The first I ever heard of any adverse claim was when my attention was called to this suit.

Q. The property was afterwards deeded to the Minnesota Transfer Company, I believe.

307 A. Yes, sir. There were several pieces of property acquired, some in the name of the Manitoba Railway Company, some

in my name, as trustee, and some in the name of S. S. Merrill. They were all put together as the Minnesota transfer.

Cross-examination.

By Mr. BRAMHALL:

Q. Mr. Hill, when you state that, previous to and at the time that your purchased this property, you had no notice of the claim of the Remsen heirs to this property, or that they had any interest in it, I suppose, of course, you mean that no one had ever informed you that these heirs made any claim to any interest in the property?

A. I mean that the title to all the property bought there—that among the other—was looked up, as is the custom, and it was certified that it was a good title. My attention was not called to any adverse claim, at all.

Q. What I was trying to get at, Mr. Hill, was simply this: You were not meaning to disclaim any constructive or record notice of this claim of the Remsen heirs, in case there was any such notice; you merely mean to disclaim any actual notice of the claim of these heirs?

A. I mean to say that I knew of no adverse claim against that property, on the part of any person.

Q. That you had no notice?

A. That nobody called my attention to it. On the contrary——

Q. You supposed you were getting a good title?

308 A. Yes, sir.

A recess was then taken until 2 o'clock, p. m.

Afternoon Session.

CHARLES H. PRATT, sworn as a witness on behalf of defendants, testified as follows:

Examined by Mr. KELLOGG:

Q. Where do you reside?

A. Minneapolis.

Q. How long have you lived in Minneapolis?

A. Fourteen years.

Q. What is your business?

A. Real estate.

Q. State whether, during the last six or seven years, you have been familiar and acquainted with the value of the real estate in question in this case.

A. I have been for, say, since 1884.

Q. Since 1884?

A. Yes, sir.

Q. Have you bought and sold property in that vicinity?

A. I bought property, I think, in that year; either May or November of 1884.

Q. Have you been buying and selling property in that vicinity from that time until the present?

A. Yes.

Q. Have you bought and sold any of this quarter section in question herein?

A. No.

309 Q. Do you know what the value of that property was from 1886 down to June, 1892?

A. Yes; I think so.

Q. What, in your opinion, was the southwest quarter of section 28, in question in this suit, worth at the time of the bringing of this suit, which was about a year ago—somewhere, say, in June, 1892?

A. You mean the 160 acres?

Q. I mean the 160 acres; exclusive, of course, of the value of the tracks, buildings and improvements placed upon it.

A. Taken as an average?

Q. No, I want your estimate of the value of the whole property. I will ask you if you have estimated the whole thing?

A. Yes; I have looked the property over, in order to make up my mind as to its value.

Q. What, in your opinion, is the total value?

A. $1,177,500, placing the land at from $3,500 to $10,000 per acre.

Q. State whether the property has greatly increased in value since 1887.

A. Certainly.

Q. From December, 1889, until June, 1892, state whether, in your opinion, it has increased in value.

A. Yes, I think it has.

Q. You are not familiar with the value of the improvements, are you?

A. No.

Cross-examination.

By Mr. BRAMHALL:

310 Q. What is your business, Mr. Pratt?

A. Mostly the improvement and sale of real estate.

Q. You own, or have owned property, since 1884, right near this property, have you not?

A. Yes; property quite similar to it, in many respects.

Q. In what is known as St. Anthony Park?

A. Yes.

Q. You own a large part of that property yet?

A. Yes.

Q. It has been for sale during all this time that you have owned it?

A. Yes, sir.

Q. And is still for sale?

A. Yes.

Q. You are therefore, as the owner of that property, I suppose, interested in getting as much out of it as possible?

A. Certainly.

Q. Mr. Pratt, I saw you looking at a piece of paper during your direct examination, from which you took your valuation. Who prepared that paper?

A. The figures were given by me, though the writing is not mine.

Q. You have testified to the same value of this property as given by Mr. Lovering. With whom have you consulted as to that value?

A. Those values I gave to Mr. Fairchild a week or ten days ago.

Q. As your idea of the value?

311 A. As my idea of the value. This morning, of course, three or four of us have consulted together.

Q. Who were the three or four—Mr. Lovering, Mr. Fairchild and yourself?

A. Yes; I think simply Mr. Fairchild, Mr. Lovering and myself.

Q. Mr. Hazzard also?

A. Possibly Mr. Hazzard.

Q. And these figures are the result of your consultation?

A. Well, it is just as I say; they are my figures, as far as I know. Others think it is a fair valuation.

Q. But those figures were made up by you?

A. Yes.

Q. Mr. Pratt, the value of this property, excepting the westerly sixty acres of it, which belongs to the Minnesota transfer, is largely derived from the fact of the transfer being there and being such as it is, is it not? Does it not give value to that surrounding property?

A. Yes; that is a very large element.

Q. And especially to the property which is known as Lovering's factory, warehouse and transfer property and the corresponding strip along the side of it?

A. Very true.

Q. Now, at the time of making your estimate of the value of this property, a few days since, you of course fixed the value of that property without the improvements; that is, without taking into account the value of the houses upon the property, and the value of the trackage and the other improvements put upon it by the transfer company; but, in arriving at that value, you did

312 take into account the value which had been given to it by the improvements made by the transfer company, did you not?

A. That is very true.

Q. Supposing that no improvements had been mode by the Minnesota Transfer Company upon that property at all—that that was absolutely vacant, and that there were no houses built in this Midway district, no warehouses or other improvements made upon Lovering's factory, warehouse and transfer property—in fact, that there had been no improvements upon this 160 acres, but that it

had remained as one unimproved tract of land—what, then, would have been your idea of the value of it by reason of the improvements surrounding it upon other property?

A. The Minnesota transfer has been such an important element in the development of that neighborhood that I don't think a man could express an opinion about it.

Q. You think it would be almost impossible to do so?

A. It seems to me so. Of course, one might say that the land would then be worth what any other land would be worth in the Midway district.

Q. Well, what, in your judgment, would that be? You are very familiar with it. Corresponding property I mean, of course.

A. Considering its location as central and convenient, taking into account the railroad communications and the electric line, I think it would be worth $5,000 an acre. That would be allowing a thousand dollars for a lot 50 by 120.

313 Q. You think that all this property divided up into lots of 50 by 120, would have a market value of a thousand dollars a lot, irrespective of the Minnesota transfer?

A. Yes; I think that is fair.

Q. Mr. Pratt, you speak of this property having risen in value all the time since 1885 and 1887 to the present time. Now, has there been any market value for this property since the boom dropped out of these cities in 1887?

A. Yes; there has been enough of a demand in the Midway district not only to prevent prices from dropping, but, so far as people are able to hold their properties, to justify them in asking a larger figure. I can say that from my own experience. I want more for my property, year by year, on the ground that improvements are going in there—improvements which both cities are making.

Q. And are you able to get more?

A. Yes, and I have got it. I don't say that I have made frequent sales, or many sales. But, for example taking this business property: I have sold, we will say, twenty lots of my business property that corresponds with this trackage property—having trackage. I sold, first, a half interest at the rate of about $2,000 or $2,200 a lot; that is, perhaps, $9,000 an acre; then, later on, the other undivided half to the same party; it was a $15,000 sale. I dropped $5,000 on the second half. And, while it was a sale not exactly on the open market, still it was a sale that was made to a party who understood the value of the property and who has seen the property since and is entirely satisfied.

314 Q. Well, of course, we all understand that property has a certain intrinsic value, whether we are always able to get it or not.

A. Certainly.

Q. Although it is sometimes hard to determine what that value is. But your idea is that this property has an intrinsic value and that the falling out of the boom of the two cities, from 1887 down to the present time, has only affected the number of sales that could be made, but has not affected the price; that is, there have not

been as many purchasers for property, which has made it more difficult to dispose of it, but when you could dispose of it you could get as much as you ever could?

A. That is about it.

Q. Then it is rather exceptional as to this particular property, isn't it?

A. Yes, it is. The Midway property has withstood the troubles of the times better than any other property I know of.

Q. I will ask you whether you know that that has been true, generally, of the Midway property—that they have been able to get more and more for their property since 1887.

A. Well, I don't know; my impression is that, as far as Merriam Park is concerned, prices have been higher year by year; but I am not certain.

Q. But you will not swear that that is the general rule as to Midway property?

A. No.

315 Q. Your idea is that these Minnesota Transfer improvements have really added about a million dollars to the value of this 160 acres?

A. Half that; half a million.

Q. Do you think it has added as much as $300,000 to the value of the property?

A. Oh, yes.

Q. Don't you think that is rather a low estimate of the value that it has added to the property, Mr. Pratt?

A. Yes; I should say that it added more than that.

Q. Well, how much, in your judgment, has it added? Has it added half a million dollars to the value of that property out there?

A. I should be inclined to say that, whatever the present value may be, it ought to have made half of it. It ought certainly to double the value of that property.

Q. It ought to double the value of that property?

A. Yes.

Redirect examination.

By Mr. KELLOGG:

Q. The Midway Heights property itself is a very high, pretty piece of property, is it not?

A. Yes.

Q. Is it wooded?

A. Yes; I think so. It is a very pretty addition.

Q. Now, I ask you if its relative position to Hamline, St. Anthony Park, Merriam Park and other reasonably thickly settled parts of the city, does not also give it an enhanced value—a value greater

316 than a piece of property right out there in the country would have?

A. Yes; that is an element of value.

Q. Had you consulted with any one as to the value of this prop-

erty when you gave Mr. Fairchild the memorandum which you say you handed to him about a week ago?

A. No; those are the figures I gave him.

Q. He wrote you, did he not, and asked you to make an estimate?

A. Yes, and I went into his office and, without any previous figuring, I gave him those figures.

Recross-examination.

By Mr. BRAMHALL:

Q. Mr. Pratt, you own property in what is known as St. Anthony Part, directly west of this property, don't you—practically the other side of it?

A. Yes.

Objected to.

Q. How many acres of that property are there, Mr. Pratt, that you bought out there?

A. 425 acres.

Q. And how much did you give for that in 1884?

A. I think $185,000.

Q. That is of the same general character as this property in question, leaving out of consideration the improvements which the Minnesota transfer have made, isn't it?

A. Yes.

Q. In 1884 there was a very large movement in real estate
317 and increase in values throughout Minneapolis and St. Paul and the Interurban district, wasn't there?

A. Yes, sir.

By Mr. KELLOGG:

Q. The large movement was after 1884, wasn't it?

A. Yes; that is very true.

Q. And the large increase in values was after you bought that property?

A. I bought that before, in the market. Additional railroads, amongst them the Northern Pacific, came in subsequently; they took five acres out of my tract there, giving them the entrance to the transfer. Then, the enlarging of the Minnesota transfer was subsequent.

Q. And the large increase, as I understand you to say, was after you bought this?

A. Yes.

By Mr. BRAMHALL:

Q. The Northern Pacific, which you speak of as having been built through there after you bought this property, established a station upon your land, didn't it?

A. Yes, sir.

Q. That station isn't anywhere near the Midway Heights, is it?

A. It is 2,000 feet away.

Q. But there is no street or road directly from that station to the Midway Heights; that is, directly across, which could be used for the purpose of getting there?

A. No.

318 J. L. LOVERING, recalled as a witness on behalf of the defendants, testified as follows:

Examined by Mr. KELLOGG:

Q. What was the value and cost of the grading done upon your property that you purchased in this quarter section?

A. I spent $11,000 in grading up block 1 to grade, and grading down four lots in block 2, and grading down all that portion of block 3 facing on the transfer, where Deering's warehouse is.

Q. Was it worth that sum?

A. I couldn't get it done any cheaper.

Cross-examination.

By Mr. BRAMHALL:

Q. Was this done before June, 1890?

A. Yes.

Q. Done after the transfer tracks were built?

A. Oh, yes.

Q. Done for the purpose of making this property available in connection with the transfer property?

A. Yes.

GEORGE H. HAZZARD, sworn as a witness on behalf of the defendants, testified as follows:

Examined by Mr. KELLOGG:

Q. Mr. Hazzard, where do you reside?

A. In St. Paul.

319 Q. How long have you lived here?

A. I have lived in Minnesota since 1866; in St. Paul since 1872.

Q. What is your business?

A. I was in the railroad and transportation business for a long time. I have been in the real-estate business for the last ten or twelve years.

Q. During the last ten or twelve years have you dealt in and been familiar with the values of property in the Midway district?

A. I have resided there for nineteen years, and have a general knowledge.

Q. Do you know what the property in question in this suit was worth, and has been, since 1886?

A. Yes, sir; in a general way.

Q. Have you handled property in that vicinity?

A. I have never handled a great deal there, but, of course, I have had to be constantly familiar with it.

Q. Familiar with the prices that property brought?
A. Yes, sir.
Q. You are familiar with the location and surroundings of the quarter section in question?
A. Yes, sir.

Dual City map, marked Defendants' Exhibit 14 and shown witness.

Q. Please state what that is.
A. That is a map of the dual cities.
Q. A map of Minneapolis and St. Paul?
A. Yes, sir.

320 Q. State whether that correctly represents the position of the two cities in reference to this property?

A. That is drawn from scale and is as correct as small work like that can be. The map was copyrighted in 1889. The blue and red marks on the map were put on today. The map was printed in 1889.
Q. Any additions made since 1889 have not been engraved upon it?
A. No, sir.
Q. What does this red block of land in the center of the map, between the two cities, represent?
A. That indicates the Tatum track; this 160 acres.
Q. The property in question herein?
A. Yes, sir.
Q. That represents the southwest quarter of section 28?
A. Yes, sir. The red line is an air line between the union depots of the two cities.
Q. Now, I see, south of this property, a platted portion of property marked Merriam Park?
A. Yes, sir.
Q. State whether or not that is Merriam Park?
A. It is Merriam Park addition.
Q. And south of that, Macalester Park?
A. Yes, sir.
Q. And east of that red block, Hamline?
A. Yes, sir.
Q. And northwest of it, St. Anthony Park?
A. Yes, sir.

321 Q. Are those the true locations of all those various properties?

A. The map is geographically correct.
Q. I notice a blue line from the center of St. Paul to the center of Minneapolis, marked University avenue—Interurban line; what does that represent?
A. That line represents the electric or Interurban line—a street-car line running between the two cities.
Q. What do the irregular black lines represent?
A. The Milwaukee road, the St. Paul, Minneapolis & Manitoba, or Great Northern, and the St. Paul and Northern Pacific railways.

Q. On the westerly side of this 160 acres I notice some black lines; what do those represent?

A. Those are part of the transfer property, as shown by their big map this morning. These lines here (indicating) are side tracks to the State fair grounds.

Q. The various check-marks all over the property represent what?

A. Platted property in the two cities.

Mr. KELLOGG: I offer Defendants' Exhibit 14, in evidence, to show the location of this property.

Map marked Defendants' Exhibit 15 and shown witness.

Q. Mr. Hazzard, state what Exhibit 15 is.

A. This is a map of the city of St. Paul, as published in connection with the city engineer's report of 1891, from D. L. Curtice's map, by permission. All that I had done to that map was the putting on of the pale red there, to indicate where this property is.

322 Q. Does this map correctly represent the platted portion of St. Paul?

A. Yes, up to the time it was published; it was corrected to date. Down here are the references explaining it.

Q. I see on this map a portion colored light red. What is that?

A. I just had that done to indicate where this 160 acres was.

Q. That correctly shows the location of the property with reference to the other platted portions of St. Paul, does it?

A. Yes, sir.

Q. Also with reference to Union Park, Merriam Park, and the other surrounding parks there that are part of St. Paul?

A. Yes, sir.

Q. Are these maps made from actual measurement—the surveys, I mean?

A. Yes, sir. In my experience I find that all maps are more or less of what you might call an advertisement, but about as accurate as they can be made.

Q. What I mean is, they are made from actual survey plats?

A. From scales. Mr. Curtice, the county surveyor, prepared this map for the engraver.

Mr. KELLOGG: I offer Def'ts' Ex. 15, in evidence.

Q. What was the value of this quarter section, without improvements, at the time of bringing this suit, about a year ago? I mean not including the value of the improvements placed upon

323 the land, but with the environment and surroundings just as they are.

A. My valuation is very little lower than that of the other gentlemen who have testified. I have put it at $1,000,000, varying from them here and there a very little. Their valuation was something over $1,100,000, and mine is about $1,000,000.

Q. State whether this property has gradually increased in value since 1886.

A. The transfer property has gradually toned up. The Midway

Heights property firmed up from 1886 to 1888. The Midway Heights has felt somewhat the stringency of money and lack of confidence and what we call depression; but the intrinsic value is more; that is to say, there are more improvements. The Hamline school, just east of that, has increased its enrollment 100 during the last two years.

Q. Do you mean that the population around there has increased?

A. Yes, sir. It is a city school, and the pupils come mostly from that section.

Q. What kind of property is the Midway Heights property? State whether or not it is high property.

A. It is a very handsome piece of property; but, of course, property there doesn't reach, nor will it reach that fancy price for residence property that it would if it were not adjacent to the transfer.

Q. In other words, the Midway Heights property would be more valuable if the transfer were not there?

A. In my judgment it would have been developed into
324 fancy property and would have been worth more; it couldn't have been kept back. As it is, it throws it into moderate homes, and things of that kind.

Cross-examination.

By Mr. BRAMHALL:

Q. Mr. Hazzard, how long did you state you had resided in Hamline?

A. I have resided just north of Hamline and at Hamline for the past nineteen or twenty years. I used to be town clerk of this section, and county commissioner.

Q. And during the last ten or twelve years you have been a real-estate agent and operator?

A. Yes, sir; I have owned some, but have sold on commission principally.

Q. And the property of which you have made a specialty during this time has been this Midway property, has it not?

A. No, sir; what I have made a specialty of is——

Q. Perhaps you misunderstood my question. I did not mean Midway Heights.

A. No, I understand. North central property I have probably made a specialty of; but I have also had a good deal of side-track property, in selling which I have come in competition with Midway Heights.

Q. Well, in your operations, for yourself and for others, you have been largely interested in property lying outside of the thickly settled portion of the city?

A. No, sir; that is, nothing further out than Elevator B, and Foundry addition.

325 Q. Have you not been acting largely for the sale of Hamline property?

A. No, sir; I was owner of some lots there, but I never sold very much property there for commission.

Q. Do you own some lots there still?

A. Yes, sir.

Q. You have been one of those who have taken an active interest in the development of Hamline, have you not?

A. Well, I have tried to do my share as a citizen.

Q. And you have also tried to do your share as one of the real-estate men of this city in trying to maintain the prices of property and making sales for others at as good figures as possible?

A. Well, it is hard to answer that question directly.

Q. Answer it in your own way, Mr. Hazzard.

A. Well, for instance, as regards maintaining prices, no; and in regard to maintaining prices in certain sections or certain places, yes.

Q. Well, is that true in regard to Hamline? Have you tried to maintain prices there?

A. Yes, sir; I have thought that Hamline rated low for its advantages.

Q. And it is always an advantage to a real-estate man to get as high a price for any piece of property that is left with him for sale as possible, isn't it?

A. No, sir. We have to get the last man out as well as put him in.

Q. Then in making these deals, you have an eye to the future as well as to the present?

326 A. Yes, sir. We are greatly misrepresented. We are called boomers, when, really, I think, we are the conservative men of the city.

Q. Now, Mr. Hazzard, upon this Ex. 14 which was introduced in evidence here a short time ago, I see a great many streets, and so forth, indicating that practically all the property in St. Paul and Minneapolis was platted previous to the time of making this map in 1889. There hasn't been much platted since, has there?

A. Not a great deal of property platted since 1889; no, sir.

Q. A good deal of this property that has been platted in these two cities has never really been improved, so to speak—it has been merely platted on paper, has it not—outlying property, a good deal of it?

A. Well, within a radius of two or three miles I think the additions have a good representation on this map.

Q. Well, outside of that a good deal of property outside the city limits of these two cities has been merely platted on paper—that is all it has amounted to—it is really unoccupied property?

A. Do you mean in general?

Q. Yes; lying away out in these suburbs.

A. Well, I don't class that as suburb; that is interurban property.

Q. Well, I say that a good deal of property which we see platted on this map, lying out on the city limits of these two cities,

327 is property that has only been platted on maps; the ground is really in an unimproved condition yet, *it is* not?

A. It is so in a general way; but there are great improvements in Midway Heights.

Q. I will come to Midway Heights in a minute. Now, we see marked on this plat, also, and to which your attention was called Macalester Park, Merriam Park and St. Anthony Park. In each of those parks, of course, there have been a large number of houses built, haven't there?

A. In Macalester there are a goodly number of good improvements—quite a marked public improvement. Merriam Park has a very large number of improvements and has a high grade of houses, built by people from both cities. Hamline, Union Park, St. Anthony Park and the syndicate additions have reaped quite a harvest of good houses—away beyond the times.

Q. Well, now, while all that is true, isn't it true that a majority of the lots in each of these additions are still unoccupied? And in answering that question I want you to remember what is Merriam Park and what is a part of Merriam Park—the addition which has been made to it and which has not been built up since.

A. Merriam Park proper is very largely occupied. The additions to Merriam Park, south, have a good representation of graded streets and sewers.

Q. I know; but isn't it true that all these additions to Merriam Park are indicated on this map as a part of Merriam Park?

328 I ask you if it is not true, in regard to all these additions, that the majority of the lots are still unoccupied?

A. Not of all the additions.

Q. Tell me what additions it is not true of.

A. If you will turn to this big map you will see the additions indicated. What is marked there as Merriam Park has a goodly representation of improvements. Macalester Park has a goodly representation.

Q. I know; but what I want to know is if it is not true, in regard to all these parks—Merriam Park, Hamline, St. Anthony Park and Union Park—considering the additions which have been made to Merriam Park upon the south and which are all indicated on Exhibit 14 as a part of Merriam Park, that a majority of the lots in each of those additions are unoccupied by houses?

A. It might be called a small majority.

Q. Is it not true as far as Hamline is concerned? What proportion of the lots in Hamline, in your judgment, are occupied by houses at the present time, or by improvements of any character?

A. Well, when the owner of a house has three or four lots do you call those lots occupied?

Q. Yes; but, of course, not in the case of a farm-house.

A. Well, west of Snelling avenue it is pretty well occupied. They run Hamline east of Snelling avenue as far as Lexington. Of course, it is only partially settled along there.

329 Q. Well, taking all that into consideration, what proportion of all the lots in Hamline—the addition known as Hamline—is occupied by improvements?

A. In the addition known as Hamline I should think there are at least 50 per cent. of the lots occupied.

Q. That is substantially true in regard to St. Anthony Park and Union Park, isn't it?

A. I should think it was, and of Merriam Park proper.

Q. Mr. Hazzard, don't you know that, within the last few years, St. Anthony Park lots have been offered at five or six hundred dollars apiece and gone begging?

A. Up on the hill there, yes, sir.

Q. Now, why are Midway Heights lots intrinsically worth more than St. Anthony Park lots? The latter lie just as prettily, don't they?

A. Well, you can walk from Midway Heights to the Interurban line and go to either city for five cents; and you can walk to the Hamline line.

Q. Well, in the lower portion of St. Anthony Park you are nearer to the Interurban line than you are in Midway Heights?

A. Well, I haven't heard of any $500 lots going begging.

Q. What have they been bringing, generally?

A. Well, for instance, the Methodist church paid $1,800 for a lot inside of the last two years.

Q. But what have lots generally brought there inside the last two years?

A. I should judge not less than from $850 to $1,250.

330 Q. What size are those lots?

A. 40 or 50 by 125. There are five to the acre.

It is stipulated that the plats of St. Anthony Park, Union Park, Hamline, Merriam Park, and the additions thereto, contained in volume 2 of Donnelly's Atlas of St. Paul, show substantially the condition of the country surrounding the property in question herein, so far as improvements are concerned, at the time this suit was brought, and may be considered in evidence and used accordingly.

Q. Mr. Hazzard, if I understood you correctly, you said, in your direct examination, that the occupying of this 60 acres by the Minnesota transfer has really depreciated the value of this property?

A. No, sir; I think that it has enhanced the value of property there that is used and adapted for business purposes; but I think that Midway Heights property would have taken a higher value for fancy residence property than it now has if the transfer were not there.

Q. Well, when you get right down to it, is there any real fancy residence property between these two cities? Have we anything that you could call fancy residence property—that is, property used for fancy residence purposes—between these two cities, in what is known as the Interurban district?

A. We have property there that has sold for about $50 a front foot; that would be from $2,000 to $2,500 a lot.

331 Q. Well, that is property that is used by people of moderate means for a moderate class of houses, and a good class of

houses; but, still, it is not what you would call fancy residence property, is it?

A. No, sir; they are houses costing from $4,500 to $8,000.

Q. Your idea, then, is that Midway Heights, if this transfer property were not there, might have been used for the same class of residences that there are in Union Park and Merriam Park?

A. Yes, sir.

J. B. ROSSMAN, sworn as a witness on behalf of the defendants, testified as follows:

Examined by Mr. KELLOGG:

Q. Where do you reside, Mr. Rossman?

A. Hamline.

Q. What is your business?

A. I am a real-estate man, and a contractor and builder.

Q. How long have you lived in Hamline?

A. I have lived there since 1882.

Q. How long have you lived in St. Paul?

A. Since 1880.

Q. Have you bought and sold property in the vicinity of the property in question in this suit?

A. I have, sir.

Q. For how many years?

A. Well, I think that property was platted in 1884 or 1885; I bought some of the first that was platted.

332 Q. Have you, during all the years from that time to the present, bought and sold more or less property in this property in question and in the vicinity?

A. I have.

Q. Do you know what that property is worth and has been worth since that time?

A. I do, so far as anybody does.

Q. What, in your opinion, was the quarter section worth at the time of bringing this suit?

A. I put the value at $1,165,500.

Q. Does that include any of the improvements on the property?

A. No, sir.

Q. What improvements are there upon the Midway Heights property, Lovering's factory, warehouse and transfer property, and all of the other property exclusive of that of the transfer company? Just state generally.

A. Well, you had an estimate from Mr. Lovering of the value of the Lovering property; I should judge that that is very nearly correct—somewhere between five and six thousand dollars.

Q. Does that include any grading?

A. No, sir.

Q. It includes the buildings?

A. Yes, sir; there are only a few buildings; there are only the two buildings, I think, besides the small buildings there.

Q. Does that include the Deering warehouse?

333 A. Yes; the Deering warehouse and the Shepard ware house; they are two large warehouses. Of course there are some small buildings.

Q. Have you built any of the houses upon this property?

A. Yes, sir.

Q. How many?

A. Well, I don't know; twelve or fifteen, I should judge.

Q. You are a carpenter and builder?

A. I am.

Q. A contractor?

A. Yes, sir.

Q. Do you know the nature of the houses on this property?

A. I do.

Q. What were all the buildings on this property worth at the time this suit was brought, exclusive of any buildings on the transfer property?

A. Well, all I can give is an estimate. There are about seventy houses, as near as I can get at it by counting them on the map, and I should think they would average from $1,400 to $1,500 apiece, which would make somewhere in the neighborhood of $100,000 improvements.

Q. That does not include the transfer property, or any grading?

A. No.

Q. I will ask you if they have any sewers or city water mains out there?

A. They have both sewers and city water on the south side of Midway Heights.

Q. That is, on Minnehaha street?

334 A. Yes; and I think they are now working on Chelton street.

Q. You don't know what the grading, sewers, and such other work as that, probably cost?

A. No.

Cross-examination.

By Mr. BRAMHALL:

Q. Wasn't that property platted in 1885?

A. Yes; I said either 1884 or 1885.

Q. And you think you bought your lots out there in 1885, the same year the property was platted?

A. Yes, sir.

Q. How many lots did you buy?

A. That is a pretty hard question for me to answer. I never had a deed of more than eight or ten; but I bought a great many lots of Mr. Tatum also, and sold them, and so they were not transferred to me direct. I suppose I sold fifty or seventy-five lots.

Q. How much apiece did you give for them?

A. I paid $500, when the property was platted.

Q. When did you sell the other lots?

A. Oh, I sold them within the next two or three years; not all of them, of course.

Q. When did you get rid of the last of them?

A. I sold one lot just before you began this suit, and I had to take it back on account of the suit.

Q. What did you receive for that lot?

A. I sold the house and lot for $2,800.

Q. How much of that sum did you consider was for the lot?

335 A. I considered about eight or nine hundred dollars was for the lot.

Q. Do you remember which lot that was?

A. That was lot 18, block 6; right up on top of the hill.

Q. And is $800 about as low a sum as you have received for any of those lots?

A. Oh, no; I sold as high as a thousand and fourteen hundred dollars, in Midway Heights, but they were corner lots, of course, and more valuable lots.

Q. Well, was this about as much as you had received for lots of about the same value as this lot?

A. Eight hundred to a thousand dollars was what we sold them *from.*

Q. What did you sell them for when you first commenced selling?

A. $550 and $600. Of course, you must understand that we bought them for $500 when it was first platted.

Q. And as soon as you could make any profit you turned them over?

A. Why, I sold lots at $50 of an advance, of course.

Q. But you sold the last for $800 just before this suit was commenced?

A. Yes; you asked me what I calculated for the lot, and that is about it.

Q. How long before that had you sold any lots for $800 that was worth about the same as this?

A. Well, I think I sold lots there the summer before for about eight or nine hundred dollars.

336 Q. The summer before?

A. Yes.

Q. Then these lots were of about the same value in 1891 and 1892, were they?

A. I considered them about the same.

Q. And is that also true as to 1890?

A. I have never sold any lots for less than $750 or $800.

Q. Well, they were practically of the same value for three or four years.

A. Yes. Of course, I considered that some of the lots in Midway Heights were much more valuable than others.

Q. Well, that was true even before that?

A. Yes.

Q. But from 1887 or 1888 to June, 1892, the property was of just

about the same value all the time, bringing just about the same, was it not? When you found a customer you would get about the same price all those years?

A. Well, not my property; mine was going up all the time.

Q. The way you got more for your property was by building on it and selling it for the improvements, wasn't it; that is, the last lots you had? The first property you sold you sold outright, without any buildings, and latterly you commenced to build and improve and sell the lots with the improvements?

A. Not entirely. I sold just about as many lots with the improvements as without, I think. The last year before the suit was begun I built four or five houses and sold them.

337 Q. You still own some property in that district, I suppose?

A. I think I have one lot left.

Q. I don't mean in the Midway Heights particularly.

A. Oh; yes; I have lots still.

Q. In putting this value upon the property which you have, Mr. Rossman, I suppose, of course, that although you have left out the value of the improvements you are taking into consideration, in making your estimate, the enhanced value of the property which these improvements have given it, of course?

A. Well, that is a hard question to answer. I put the value at what I considered they were worth when I made the estimate. Midway Heights property is worth less than it would have been without the Minnesota transfer.

Q. You are taking what you consider the value of the land at the present time, with all the improvements upon it, less the value of the improvements?

A. Certainly.

Mr. KELLOGG: Do you consider that property has increased gradually since 1887 to the present time?

WITNESS: Yes, sir; in Midway Heights.

H. S. FAIRCHILD, sworn as a witness on behalf of the defendants, testified as follows:

Examined by Mr. KELLOGG:

Q. Mr. Fairchild, where do you reside?

338 A. St. Paul.

Q. How long have you lived here?

A. It will be thirty-six years next July.

Q. What is your business?

A. Real estate.

Q. How long have you been in that business?

A. All the time. I have done a little other business in connection with it.

Q. How many years have you been connected with the sale of property in the Midway district?

A. Oh, since there was a settlement there. I platted Midway Heights for Mr. Tatum.

Q. For the Tatums?

A. Yes, sir.

Q. Were you the agent of the Tatums?

A. Yes, sir.

Q. State whether you sold all of the property in the southwest quarter, exclusive of the transfer property, which has been sold.

A. I sold all of it; all the strip north, and all the strip west known as the warehouse property, and all of the lots in Midway Heights excepting twenty-four which I believe we have left.

Q. Did you also sell the strip that was sold above that and which passed into Mr. May's hands?

A. Yes.

Q. Then you sold all of the property, outside of what is known as the transfer sixty acres, excepting twenty-four lots which you still have or which the Tatum estate still own?

A. Yes, sir.

Q. Have you dealt in other Midway property?

339 A. Yes, sir. I sold all of Quinby Park and nearly all of Howard Park, besides considerable other property.

Q. Then you know what the value of property is in the Midway district, including this property, and what it has been since 1885?

A. I think so.

Q. What in your opinion, was the value of the *value of the* southwest quarter of section 28—this Tatum tract—exclusive of the improvements thereon at the time of the bringing of this suit?

A. The total sums up, without improvements, at $1,129,000.

Q. State how much per acre you allowed for that property, naming the different portions.

A. I allowed for Midway Heights, sixty-five acres at the rate of $4,200 per acre; that is, the parks—there are three little parks. If those parks had been subdivided into lots, six lots to the acre, at $700 a lot, $4,200 per acre, that would make $273,000. The tract shown as a white strip on Exhibit "13," right north of Midway Heights, I put at $3,000 an acre. Then I estimated the warehouse property—that is, that strip lying between Prior avenue and the transfer, embracing about twenty acres, as follows: It is 2,640 feet in length, about half a mile; the 2,640 feet fronting on Prior avenue I put at $20 a front foot, and the 2,640 feet fronting on the transfer I put at $60 a front foot which would make an average of $40, the total being a little over $211,000.

Q. For the entire twenty acres between Prior avenue and the transfer company?

340 A. Yes, sir. Then, when it came to the transfer property, I had a great deal of difficulty in fixing, in my own mind, a satisfactory idea of the value; but, after talking with the gentlemen who have already testified on that point, who knew much more about its value than I did myself, I became satisfied that they were about right, and I put it at the same figure that Mr. Pratt did, $10,000 an acre.

Q. That is, exclusive of the improvements?

A. Yes, sir.

Q. At the time this suit was brought?

A. Yes.

Q. Do you think that the property was worth that?

A. Yes, sir.

Q. And you would make the total $1,129,000?

A. Yes, sir; exclusive of improvements. And then, to go on and complete the matter, I figured on sixty-five houses. Mr. Rossman said he counted seventy. And Mr. Tatum and I had built seven, and I knew the cost of quite a number of the others, so I estimated them at $1,500, which would make, substantially, $100,000. Then, besides, there are warehouses and other buildings, barns, etc., so I suppose the total is somewhere between $100,000 and $110,000.

Q. That does not include the grading or street improvements?

A. No, sir.

Q. Have you any idea what the cost of the grading and street improvements would have been?

A. No, sir.

341 Q. At the time this suit was brought what streets were graded?

A. Minnehaha on the south, Fairview part of the way, though not very far, I think; Tatum avenue from Minnehaha to Chelton, and a little beyond Chelton, up to the rise; they did that in order to get the fillings for some of the other ground. I am not certain whether Chelton was finished.

Q. Are those the only streets that were graded?

A. Those are the only ones.

Q. Now, are the other streets open?

A. Yes, sir.

Q. Are they so that you can pass through them?

A. Yes. There is some landscape work there. You will notice here a little depression, where the streets run in a curved line, and then the rise comes here (indicating), so that you can drive over any of them very easily. I had the trees cut out of all the streets.

Q. Do you know what that improvement cost?

A. No; not a great deal.

Q. Mr. Fairchild, were warranty deeds given for all this property

A. Yes, sir.

Q. Did you have any knowledge, before this suit was brought, of any adverse claim by the heirs of George W. Remsen, or any one else?

A. Yes; I don't know how long before, but about three or four weeks prior, I think, Mr. Benedict told me that Mr. Bramhall was about to bring a suit. It was only announced a few weeks in advance of the suit.

342 Q. Is that the first notice you ever had?

A. Yes, sir.

Q. So far as you know, did all of these grantees purchase without any other knowledge that you had?

A. The title was examined by various attorneys, and they were all satisfied. I never had heard of any adverse claim.

Q. You never informed any of them but what the title was good?

A. No.

Mr. BRAMHALL: We shall not question that fact, as far as actual notice is concerned.

Q. Mr. Fairchild, state whether this property has gradually increased in value since 1887 or 1888?

A. Its salability has been diminished; the actual, intrinsic value, I think, has been increased by the improvements made and by the growth of the city and all that.

Q. Then, do I understand you to mean that the salability—to wit: the ability to sell a large amount of property—has been diminished or the number of sales?

A. I mean a little more than that. I mean that there are certain owners in embarrassed circumstances who would sell for something less. While the majority of them hold their property at even advanced prices, there are some who have been forced to sell at loss.

Q. Well, the general value of the property has greatly increased?

A. I think the real, intrinsic value has, yes.

343 Cross-examination.

By Mr. BRAMHALL:

Q. Mr. Fairchild, since 1887 the city of St. Paul has increased in population, hasn't it?

A. Yes, sir.

Q. There have been new buildings built, both dwellings and business buildings?

A. Yes, sir.

Q. The intrinsic value of the property in St. Paul, then, has all increased, hasn't it?

A. Yes, sir.

Q. But, still, though its intrinsic value has increased since 1887, its market value has depreciated, hasn't it?

A. It has in many parts. In some parts it has advanced.

Q. And that has come, or may have come, from the fact that certain persons owning property in that vicinity could not afford to hold on any longer, and so sold their property for less?

A. From the stringency of the market, and the necessity of certain persons to sell.

Q. Now, that being true, hasn't the same thing applied to the Midway district? Although, on account of the buildings that have been built, it may be intrinsically worth more, still, is it not true that, because there were people who, on account of the stringency in the money market, could not afford to hold on to their property, and had to part with it for what they could get, that has made the market value of the property less?

344 A. I suppose it is fair to put it in that way. But let me give you an illustration. Some time ago I was trying to sell some lots at a thousand dollars apiece. The prospective purchaser came and told me that he knew of some that had been sold for $550, and said he thought he ought not to pay more than $750. But I

was not forced to sell directly and afterwards he came in and paid me a thousand dollars apiece for the lots.

Q. Well, through this cause of people not being able to hold on to their property, and other causes, it has made a difference in the market value—caused property to depreciate generally, hasn't it?

A. Except that lately certain streets in the city have improved, like Sixth street and Seventh street.

Q. But that caused even Sixth street to depreciate, for the time being, didn't it?

A. Well, Sixth street has not receded any since the building of the New York Life building, and lately it has advanced quite largely.

Q. When you state that you had no notice and that none of the purchasers from the Tatums had any notice of the claim of the Remsen heirs, you mean, of course, notice communicated by any person to them?

A. No; I mean they never had any intimation.

Q. Well, that is, something communicated to them? What you mean is that there has been nothing communicated to you or them in regard to the claim of the Remsen heirs?

A. Yes, sir; nothing communicated, and nothing intimated, and we never had any suspicion about the title.

345

Q. You don't mean to say that, if the record was constructive notice, you didn't have constructive notice. All you mean is that you didn't have any actual notice?

A. Yes; I never had any actual notice or intimation.

Q. And you meant the same thing in regard to the Tatums and in regard to those to whom the Tatums sold?

A. Yes, sir.

Q. Mr. Fairchild, I suppose it is true that real-estate agents, including yourself, are always trying to get as much for property as possible?

A. Well, now, Mr. Hazzard made a point there that is really noteworthy. It is really remarkable what a misapprehension there is in regard to the action of real-estate men. We know that the lower the prices are put the better our chances are for a sale, and we labor to get the seller to take the lowest price possible, and then we set it at that price. I say that, instead of the real-estate men always trying to get the highest prices, they aim to get property listed on their books at the lowest point they can, knowing that their chances are then so much better for making a sale, and they sell it at that price. If it were their own personal property, then it would be different; then they would want to get all they could.

Q. Well, Mr. Fairchild, if I should bring a piece of property to you, or to any real-estate agent, and tell him to sell it, the commission the real-estate man would get would be founded upon the price he received, as I understand it?

346

A. There isn't one-thousandth part of the property placed that way.

Q. Well, when there was a movement of property here a few

years ago wasn't the real-estate agent's commission dependent upon what he sold for?

A. It is yet.

Q. Then, that being true, I say that if I come to you and give you a piece of property to sell, you will get all you can for it, won't you?

A. As a matter of course; but, 999 times out of 1,000, you would fix your price, and we would get you to put that price as low as possible, in order that we might be sure of making a sale. We would never think of advancing the price in order to make a bigger commission. But, if you did come (which would be a very rare thing) and say, "Mr. Fairchild, I want you to sell this property and do the best you can for me," then we would try to do the best we could, of course.

Q. But isn't it true that when people come in to you and are undecided whether they will sell or not, and say, "Mr. Fairchild, how much can I get for this property if I place it in your hands for sale" that then you state to him all you think you can get for it?

A. Well, we try to get it as low as possible. We don't care so much about having it listed with us as we do about getting it sold. I was glad to take that point up, because it struck me that Mr. Hazzard's remark was true.

347 Redirect examination.

By Mr. KELLOGG:

Q. When were these buildings—these houses—built on this property, principally?

A. Oh, they commenced in 1886, 1887, 1888 and 1889.

Q. Any built during the years 1890 and 1891?

A. Yes.

Recross-examination.

By Mr. BRAMHALL:

Q. In making up your estimate of the value of this southwest quarter you did that, as I understand it, the same as the other witnesses—by taking the present value of the property, clear of all improvements?

A. Yes; but regarding the improvements as there.

Q. Regarding the improvements as there?

A. Yes, sir; that is, we understood that you wanted us to appraise, first, the property, and then the improvements.

Q. Now, do you think that that property would be worth as much as the estimates you have given in case there was not a house or a track upon it—in case that 160 acres was just one solid piece of unimproved property?

A. I think that in five years we would get considerably more.

Q. But I mean its present market value; do you think it would be as great as that which you have given?

348 A. Yes; I think so.

Q. Is that estimate that you have given of the value of the property a market value which could today be realized for that property?

A. No, sir; I don't think you could sell it for that.

Q. What do you think it could be sold for today?

A. Oh, it is hard to tell. I have put property up at public sale, after trying to sell it at private sale, and not a man would be there to bid. But that is not a measure of value, any more than when it is kiting—booming.

Q. Isn't it also true that you could not have got that much for the property in June, 1892?

A. You couldn't have sold any large body of it, because the market was dull. You could have sold some.

Q. What you meant to give was what you considered its intrinsic value, and not what it could be sold for on the market today?

A. What an owner had better hold it for than to take less.

Examined by Mr. KELLOGG:

Q. You mean by that the regular market value, not the market value if you were compelled to throw the whole thing on the market and sell it, but as you would arrive at the market value of any property, isn't that true?

A. I mean what a man could afford to pay for it, or what a man owning it could afford to carry it at. I don't measure the
349 value of property either by the prices in a period of inflation or by what you can get in a period of depression.

Q. And your figures are an estimate of the market value?

A. That, I should say, was the market value. If anybody wanted to buy he would be justified in paying that.

Q. And your answer to Mr. Bramhall was that if you were compelled to sell this property, anyway——

A. —that then it would not bring that.

Q. Do I understand that the figures you gave are an estimate of the market value of that property made up from what you know of sales of property, and your general judgment based on that?

A. Yes, sir.

Counsel for defendants then produced and offered in evidence a certified copy of power of attorney from Hannah Tatum to Samuel C. Tatum, dated April 29, 1880.

Marked Defendants' Exhibit "16."

An adjournment was then taken until Thursday morning, June 1, 1893, at 10 o'clock a. m., at which time the parties again appeared before the examiner and the further taking of testimony herein was continued as follows:

GEORGE L. HENDRICKSON, sworn as a witness on behalf of the defendants, testified as follows:

Examined by Mr. KELLOGG:

350 Q. Mr. Hendrickson, where do you reside?

A. In Ramsey county, on a farm outside of the city.

Q. How long have you lived here?

A. Thirty years.

Q. Do you know the quarter section of land in question?

A. Yes, sir.

Q. Do you know Elizabeth Wetzel, one of the complainants?

A. I have met her.

Q. Do you know Mary J. Remsen, one of the complainants—the wife of George W. A. Remsen, deceased?

A. Yes, sir.

Q. Did you ever hear anything about a claim of these complainants to this land in question?

A. Yes, sir.

Q. Did you have any conversation with Elizabeth Wetzel and Mary J. Remsen, in Philadelphia, relative to this claim?

A. I did.

Q. When was that?

A. That was in December, 1889.

Q. What part of December?

A. It must have been somewhere between the 7th and the 15th; I should say in the second week of December, because I went from Philadelphia to New York and Boston and was back here by Christmas, I remember. I don't know the exact date.

Q. Who was present at that conversation?

351 A. Do you mean the first or the second conversation?

Q. At both. State who was present at the first one.

A. The first conversation was held with Mary J. Remsen, I think—the widow of George W. A. Remsen.

Mr. BRAMHALL: Fix the date of that.

WITNESS: Well, I couldn't say, excepting that it was in the early part of December, and, I think, the day before I had the conversation with Mrs. Wetzel. I found this Mrs. George W. A. Remsen first, and ascertained that she was the wife or grass widow of one of the heirs of the estate of George W. Remsen, and found that the widow of George W. Remsen was still living; she had been married the second time; her name was Mrs. Wetzel. At the second meeting, Mrs. Wetzel and Mrs. Remsen and B. F. Lehman were present.

Mr. BRAMHALL: Where did that occur?

WITNESS: That occurred at the house of Mrs. Wetzel.

Q. What was said there between you and Mrs. Wetzel and Mrs. Remsen?

A. I ascertained, by questioning, first, that she was the reputed widow of George W. Remsen, and stated my errand to be the obtaining of a power of attorney from her and the heirs of George W. Remsen, to obtain title to lands in Minnesota.

Q. What did Mrs. Wetzel say to you about having any land?

A. She said they never had had any land in the West that
352 she knew of, excepting the right, under Mexican warrant, of George W. Remsen.

Q. Well, what did she say had become of that?

A. That they had sold it—made an assignment of the land warrant.

Q. Who did she say attended to the business for her?

A. Isaac Boileau, a justice of the peace and an old friend of the family.

Q. Who was present during that conversation?

A. Mary J. Remsen and B. F. Lehman.

Q. What did you state about how this land was located? I don't mean as to the position of the land, but as to what kind of a land warrant.

A. Mexican land warrant; soldier's right.

Q. State whether you then and there told them of any defect in the assignment or anything, or of any claim that you had to that or made to it.

A. Why, I had to tell them that there was some right in the heirs, to base any claim for power of attorney.

Q. Well, what did you say?

A. I simply said there was a defect in the title; I didn't specify what.

Q. Was anything said there between you and her about there being a defect in the assignment of this land warrant?

A. No.

Q. You didn't say that?

A. No.

Q. Anything else that was said about the land warrant by her or Mary J. Remsen?

353 A. Mary J. Remsen knew nothing of it. Mrs. Wetzel talked a good deal, but she didn't talk very much to the point, excepting that that was the only claim to any land in the West that George W. Remsen ever had.

Q. You say that you told them that this land was located with a Mexican land warrant?

A. Yes.

Q. Issued to whom?

A. Issued to George W. Remsen.

Q. Remsen himself, or his heirs?

A. Issued to the heirs of George W. Remsen.

Q. Did you see any of the other heirs?

A. I did not.

Q. Do you know Mr. William C. Mayne?

A. I met him in Philadelphia; yes, sir.

Q. At that time?

A. At that time.

Q. Did he have any talk or consultation with Mrs. Wetzel and Mary J. Remsen at that time?

A. Not while I was there.

Q. That, you say, was in December, 1889?

A. Yes, sir.

Counsel for defendants then offered in evidence the book of original entry and read the following entries in evidence therefrom:

Heading.	Entry.
Description of tract:	Southwest quarter of section 28, township 29, range 23; 160 acres.
Rate per acre; dollars, cents:	M. S. W.
Purchase-money; dollars,	
354 cents:	28,811
Name of purchaser:	Nathan C. D. Taylor.
Date of sale:	October 31, 1849.
Number of receipt and certificate of purchase:	128.
By whom patented:	(Blank.)
Date of patent:	"
Volume; page:	"

Mr. KELLOGG: It is admitted that this is the book of original entry.

Mr. BRAMHALL: Oh, I suppose so.

It is stipulated that the testimony taken in this case as to the value of improvements is taken upon the merits of the case and not with a view of assessing the improvements under the statute of the State of Minnesota known as the claimants' act, and, should it become necessary to ascertain the value of improvements under said act, the question of their value shall be tried *de novo*.

It is further stipulated that all of the testimony herein is taken subject to its relevancy, materiality and competency, the same to be determined by the court upon the hearing of this cause.

It is admitted that whatever title was acquired by Pennock Pussey has, by various and sundry mesne conveyances, passed to the defendants named in the bill of complaint as having interest in the property and set forth in the schedules of owners of property attached to the answers for the purposes of the trial of this action upon the merits, and said mesne conveyances were warranty deeds in the usual form.

355 J. L. LOVERING, recalled as a witness on behalf of the defendants, testified as follows:

Examined by Mr. KELLOGG:

Q. When did you purchase the property that was sold to you, to wit, blocks 1, 2 and 3?

A. I haven't the exact dates with me, but between 1883 and 1885. I didn't buy it all at once. I picked up some smaller pieces later, in 1885.

Q. You bought it before the great rise in the value of property which followed 1885?

A. Oh, yes. I think I bought some of this property—the two smaller pieces—in the early part of 1885.

Q. Did you pay for it in cash?
A. I did, sir.
Q. Do you remember how much you paid?
A. Yes, sir; $46,498.
Mr. BRAMHALL: That was blocks 1, 2 and 3?
A. Yes; that is all my stuff up there.
Q. At various times after this did you acquire other properties through Midway Heights and sell the same?
A. I did.
Q. Did you pay for it?
A. I did.
Q. At the time you purchased any of this property did you have any notice or knowledge of any claim by the Remsen heirs to this property?
A. I did not.
Q. Or know of any defect in the title?
356 A. I did not; I had all my titles examined.
Q. By whom?
A. Some of the best attorneys here. Williams & Goodenow did most of my title-examining. I have their opinion to almost every piece that I bought there.

Cross-examination.

By Mr. BRAMHALL:

Q. In saying that you had no notice or knowledge of the claim of the Remsen heirs at the time you purchased any of this property I suppose you mean by that, Mr. Lovering, the same as the other witnesses explained that they meant—that you had never heard of any claim being made by them, either through them or through any one else—no one had ever told you that they had any interest in it or claimed any interest in it?
A. I had no actual notice served on me, and I tried to find out if there was any notice of record and paid the best attorneys to look it up for me, and they reported a good, clear title.
Q. You had never heard, through your attorneys or otherwise, that the Remsen heirs had any interest in the property?
A. No; or anybody else.

Stipulation.

It is admitted, that in December, 1889, Mr. William C. Mayne, one of the counsel for the complainants, knew that the land
357 warrant in question had been issued to the widow and heirs of George W. Remsen, deceased, and knew of the assignment set up in the complaint, and that said land warrant had been located upon the southwest quarter of section twenty-eight (28), town twenty-nine (29), north of range twenty-three (23) west, Stillwater land office, Minnesota, and a patent issued therefor to Nathan C. D. Taylor, and that he inspected, in said December, 1889, the land warrant, assignment, appointment of guardian (being Com-

plainants' Exhibit No. 4 herein) and the patent, which papers were at the Land Office in Washington; that, during the months of December, 1889, and January and February, 1890, the said Mayne communicated with all of the complainants except the heirs of George W. A. Remsen, deceased, the fact that a Mexican land warrant had been issued to the widow and heirs of George W. Remsen, deceased, for service in the Mexican war, and that there was a question as to the validity of the sale and assignment thereof and a chance to claim the land located thereunder, without disclosing to them the location of the land located under said warrant; that the question of the giving of a power of attorney by the heirs to another party than himself, for the purpose of bringing suit and making settlements for their interest in said land, was discussed; the parties with whom said Mayne had the discussion declined at that time to execute such power of attorney or any power of attorney until they were informed of the location of the land
358 under such warrant and its value; this Mr. Mayne declined to give, because the parties for whom he was acting, and who had discovered this alleged defect in the title had instructed him not to do so; that said negotiations continued until about May, 1890, when they were broken off without his having disclosed to them or any of said heirs, the location of said land or its value; that thereafter he did not act for or represent said Western parties, but did make a personal investigation for the purpose of ascertaining the exact location of this land and the parties in possession under such warrant, and that on August 18, 1891, he caused the complainants to meet at his office, when he communicated to them, for the first time, the exact location of this land, to wit: that it was in the city of St. Paul, in the State of Minnesota, and fully discussed with them the matters stated in the bill, and that he thereafter acted as their attorney, and, with their consent, employed to assist him in the prosecution of their claims as to said land the counselors and solicitors named in the bill herein, and that previous to said August 18, 1891, said Mayne had not acted as attorney or agent of said plaintiffs or any of them in respect to any of the matters in controversy in this suit.

BRAMHALL & TAYLOR,
Plaintiffs' Attorneys.
DAVIS, KELLOGG & SEVERANCE,
Defendants' Solicitors.

359 *Stipulation of Facts.*

It is stipulated by and between the parties to the above-entitled cause that if C. W. Bunn and Wm. Ely Bramhall were duly sworn and testified in this cause, they would testify as follows, to wit:

That they are solicitors for the complainants herein; that William C. Mayne, one of the solicitors for the complainants herein, resides in the city of Philadelphia, Pennsylvania; that said Mayne visited St. Paul on September 17, 1891, for the purpose of obtaining the opinion of local counsel in St. Paul as to the validity of the

claim of the complainants herein and if such opinion should be favorable to the validity of their said claim, to employ local counsel in said St. Paul to act for said complainants, and with him in the preparation and presentation of their said claim to the court; that with that object in view he consulted Clapp, Bramhall & Taylor, attorneys residing in said St. Paul and solicitors for the complainants herein, particularly Mr. Bramhall of said firm.

That an abstract of the property in question in this suit, containing 983 entries, was made by the official abstract clerk of the county of Ramsey, Minnesota, the making of which took considerable time; that said Bramhall undertook to and did examine said abstract and the facts and validity of plaintiffs' claim, and the legal questions involved therein, as expeditiously as he was able in a thorough manner to do, in connection with his other legal business.

That during all of the times herein mentioned, his partner, Mr. Clapp, of said Clapp, Bramhall & Taylor, was attorney gen-
360 eral of the State of Minnesota, and as such fully occupied, and had no time to, and did not devote any time to any of the legal business of the said firm of Clapp, Bramhall & Taylor; that Mr. Taylor, the other member of said firm, was a young man just admitted to practice law from the law school, and without experience at the bar; that said Bramhall concluded his said examination the latter part of December, 1891, when said Mayne again visited said St. Paul, to wit: on December 30, 1891, for the purpose of obtaining the report of said Bramhall upon said matters, and making arrangements with his firm to act for complainants in this matter, and during said visit said Mayne did receive such report and make such arrangements.

That upon the advice and recommendation of said Bramhall that a suit of this character should not be brought unless other local counsel were also of the opinion that complainants had a good claim, Lusk, Bunn & Hadley, also attorneys in said St. Paul, and solicitors for the complainants herein, were consulted in January, 1892; that they took the matter under advisement for about thirty (30) days for the purpose of making a personal examination of the legal questions involved, and did the same as quickly as possible in connection with their other legal work; that at the end of that time said Lusk, Bunn & Hadley consented to act as solicitors for complainants; that as soon as they consented to do so said Bramhall caused maps of the premises to be made, and the abstracts of the property in question to be continued, and examined the title to each piece, parcel and lot constituting a portion of the
361 premises in question, and caused a search to be made in the offices of the clerk of the district court of said Ramsey county and the circuit court of the United States for this district, for judgment liens against the owners of any of said property for the purpose of ascertaining the proper and necessary parties defendant in this cause; that there were 1,133 entries in the abstract of title to this property, and 95 entries as to judgments to be examined and which he did examine; that when he had completed this examina-

tion and ascertained the claims of said parties, he went all over it again for the purpose of verifying and correcting the same.

That all of this involved an immense amount of hard and laborious work, which necessarily consumed a very large amount of time; that he did everything set forth herein as quickly and as expeditiously as he could in connection with his other legal engagements and labors.

That at the same time said Bramhall was making this examination as to parties, Bunn, of said Lusk, Bunn & Hadley, was preparing the bill herein, and as soon as said Bramhall had completed said examination said bill was completed and sent to Mayne at said Philadelphia for examination, and was promptly returned by said Mayne, and as soon as returned put in the hands of the printer, and it and the subpœnas herein were printed as quickly as possible and the bill herein filed on May 28, 1892. That said bill and subpœnas were specially printed by reason of the large number of defendants herein, and to meet the supposed demand for the same.

362 That between August 15, 1891, and the time of the filing of the bill herein there were, as evidenced by said official abstract, seventeen (17) deeds given affecting eighteen (18) lots in Midway Heights, and three (3) lots in Lovering's factory, warehouse and transfer property, and thirteen (13) mortgages affecting eleven (11) lots in Midway Heights and twenty (20) lots in Lovering's factory, warehouse and transfer property, all of which constituted a portion of the property in question.

That George Hendrickson, who has testified in this cause, did not represent any of the solicitors herein on his trip to Philadelphia, and that none of them at the time thereof knew anything about the same, except as appears in his testimony herein, and that the patent issued to Nathan C. D. Taylor on March 20, 1850, set forth in the complaint herein, was filed and duly recorded in the proper county in this State, to wit, in said Ramsey county, on January 8, 1852, and recorded in Book C of Deeds therein, on page 288; that said C. W. Bunn is the Bunn of said Lusk, Bunn & Hadley, and said Wm. Ely Bramhall the said Bramhall of Clapp, Bramhall & Taylor.

That the admission as to what said Bunn and Bramhall would testify to if sworn shall have the same force and effect as if they had regularly testified to said facts herein, and that upon any and all hearings of this matter the defendants may interpose any and all objections as to the materiality of said testimony of said

363 Bunn and Bramhall as if they had been examined in open court, and such objection specifically made to the matter objected to.

BRAMHALL & TAYLOR,
Complainants' Solicitors.
DAVIS, KELLOGG & SEVERANCE,
Defendants' Solicitors.

COMPLAINANTS' EXHIBITS.

No. 1. Marriage certificate of Paul Wetzel to Mrs. Elizabeth Remsen, June 28, 1864.

No. 2. Marriage certificate of George Remsen to Elizabeth Hopkins, May 19, 1830.

No. 3. Bible record of births, marriages and deaths.

No. 4.

DEPARTMENT OF THE INTERIOR, E. P. F.
GENERAL LAND OFFICE, J. A. D.
WASHINGTON, D. C., *June* 2, 1892.

I, William M. Stone, acting Commissioner of the General Land Office, do hereby certify that the annexed copy of warrant, No. 28811, for 160 acres, act of 1847, with the assignment and endorsements thereon, is a true and literal exemplification of the original paper.

In testimony whereof I have hereunto subscribed my
364 name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

W. M. STONE,
[SEAL.] *Acting Commissioner of General Land Office.*

WAR DEPARTMENT,
OFFICE OF THE COMMISSIONER OF PENSIONS.

It is hereby certified, that the land warrant No. 28811 for 160 acres has been issued in the name of Elizabeth Remson, widow, Harriet A. Remson, Mary Ann Remson, John W. Remson, Elizabeth Remson and George W. A. Remson, children, heirs-at-law of George W. Remson, deceased, late a private, Company K, Third regiment, U. S. infantry, under date of September 30, 1848, and will be deposited in the General Land Office at the seat of government; and that, pursuant to the provisions of the subjoined ninth section of the act of Congress, approved on the 11th day of February, 1847, entitled "An act to raise for a limited time an additional military force, and for other purposes," this certificate of right to locate said warrant on any quarter section of land subject to private entry will be received at any of the land offices of the United States, under the regulations and restrictions set forth in the accompanying statement of the Commissioner of the General Land Office.

After the location of this certificate, it is to be surrendered to the General Land Office, whence the patent will issue.

365 Given under my hand at the Pension Office this 30 day of September, 1848.

J. L. EDWARDS,
Commissioner of Pensions,
By F. S. EVANS.

(Located and patented.)

Case of Honorable Richard Broadhead, Easton, Pa.

26—94

Hutchinson & Co.

For value received, we, Elizabeth Remson, widow, for myself, and as guardian of the persons and estates of Mary Ann Remson, John Wesley Remson, Elizabeth Remson and George W. A. Remson, minor children of George W. Remson, deceased, duly appointed by the orphans' court of the city and county of Philadelphia; and Harriet A. Remson, do hereby sell and assign unto Nathan C. D. Taylor all our right and title, and all the right and title of the said minor children to the within certificate or warrant No. 28811 for one hundred and sixty acres.

Witness our hands this eleventh day of October, 1848, at Philadelphia, in the State of Pennsylvania.

her
ELIZABETH x REMSON,
mark.
For Myself and as Guardian of the Minor Children of George W. Remson, Deceased.
HARRIET A. REMSON.

366 Attest:
ISAAC BOILEAU.
WM. F. SMALL.

Acknowledged before me this eleventh day of October, 1848, at Philadelphia, in the State of Pennsylvania.

ISAAC BOILEAU,
Alderman and Justice of the Peace.

COMMONWEALTH OF PENNSYLVANIA, }
City and County of Philadelphia, } *ss:*

I certify that Isaac Boileau, Esquire, before whom the above acknowledgements purport to have been made is an alderman and justice of the peace, duly authorized to administer oaths and take acknowledgements of deeds, etc., and that above is his signature.

In witness whereof I have hereunto set my hand and
[L. S.] affixed my official seal this twelfth day of October, in the year 1848, at Philadelphia, in the State of Pennsylvania.

JOHN SMITH,
Prothonotary of the Court of Common Pleas, etc.

COUNTY OF PHILADELPHIA, *ss:*

I certify that at an orphans' court, for the county aforesaid
367 held at Philadelphia on the sixth day of October, A. D. one thousand eight hundred and forty-eight before the Honorable Edward King, president, and the Honorable Jas. Campbell, Anson V. Parsons and William D. Kelley, justices of said court—

[L. S.] In the Matter of the Estate REMSON Minors.

On petition of William F. Small, Elizabeth Remson was appointed guardian Mary Ann Remson, John W. Remson, Elizabeth Remson and Geo. W. A. Remson minor children of George W. Remson dec'd.

Witness my hand and the seal of the said court, this twelfth day of October, A. D. one thousand eight hundred and forty-eight.

DAVID HANLEY,
Clerk of the Orphans' Court.

Land warrant No. 28811. Register and receiver's No., 128.

STILLWATER LAND OFFICE, *October* 31*st*, 1849.

We hereby certify that the attached military bounty land warrant, No. 28811 was on this day received at this office, from Nathan C. D. Taylor of Saint Croix county, Territory of Minnesota.

A. VAN VORHES, *Register.*
N. GREENE WILCOX, *Receiver.*

I, Nathan C. D. Taylor, of St. Croix county, Territory of
368 Minn., hereby locate the southwest quarter of section No. twenty-eight, in township No. twenty-nine N., of range No. twenty-three (23) W., in the district of lands subject to sale at the land office at Stillwater, containing one hundred and sixty acres, in satisfaction of the attached warrant numbered 28811.

Witness my hand this 31st day of October, A. D. 1849.

NATHAN C. D. TAYLOR.

Attest:
A. VAN VORHES, *Register.*
N. GREENE WILCOX, *Receiver.*

STILLWATER LAND OFFICE, *Nov.* 31, 1849.

We hereby certify that the above location is correct, being in accordance with law and instructions.

N. GREENE WILCOX, *Receiver.*
A. VAN VORHES, *Register.*

Land warrant certificate No. 28811.

I, Nathan C. D. Taylor, being desirous of locating the southwest quarter of section No. twenty-eight in township No. twenty-nine (29) north of range No. twenty-three (23) W., in the district of lands subject to sale at the land office at Stillwater, with the attached military land warrant certificate No. 28811, issued under the provisions of the ninth section of the act of Congress approved February
369 11, 1847, do solemnly swear that from my own knowledge of the fact, after actual inspection of the said tract of land, on or about the 30th day of October, A. D. 1849, there was not at that time an actual settlement and cultivation upon any part of said land, nor was there any person or persons residing upon it.

And I do verily believe that there is no actual settlement and cultivation or any person or persons residing upon any part of said land at this time.

NATHAN C. D. TAYLOR.

Subscribed and sworn to before me this 31st day of Oct., A. D. 1849.

N. GREENE WILCOX,
Receiver of the Land Office.

I request my patent to be sent to ——.

Endorsed on the back thereof:

No. 28811..... 160

47

Elizabeth Remson, widow, Harriet A. Remson, Mary Ann Remson, John W. Remson, Elizabeth Remson and George W. A. Remson, children, heirs-at-law of George W. Remson, dec'd late a priv. Comp. K.; 3d reg. U. S. inf. Nathan C. D. Taylor ass. of said Elizabeth Remson in her own right and as guardian of the aforesaid minor heirs. S. W. ¼ 28, 29 N., 23 W., Stillwater, Minn. See money letter 40273, 160. Aug. 8, '89 to C. of P. Pat'd Mar. 20, 1850. Rec. vol. 17, p. 385, June 4, '89 see to Fred'k C. Stevens, *storas.*

Hon. Rob't Smith, present.

370 Over.

No. 28811, Nathan C. D. Taylor, filed Oct. 31, 1849. S. W. ¼ sec. 28, town 29 N., range 23 W.

Patent to be delivered to Hon. R. Smith, present.

No. 128.

Sep. 14, '91, ctfd. copy of warrant and the assignment endorsed thereon trans. to Wm. C. Mayne 926 Walnut St., Phila., Penna.

Cost of copy..... 2 20
Am't ret'd..... 2 80

5 00

M. L. 60617.

No. 5. Certificate as to record of marriage of George Remsen and Elizabeth Hopkins.

No. 6. Page of said original record of marriage marked for identification.

No. 1. Page of original record of marriage of Geo. W. A. Remsen to Mary J. Derbeshier marked for identification.

No. 2. Copy of record of births, marriages and deaths.

No. 3.

371 Orphans' Court, Philadelphia City and County.

In the Matter of the Minor Children of GEORGE W. REMSEN, Deceased.

To the hon. the judges of the orphans' court of the city and county of Philadelphia:

The petition of the undersigned respectfully showeth that Mary Ann, John Wesley, Elizabeth and George W. A. Remsen, minor

children of George W. Remsen, deceased, who are all under the age of fourteen (14) years, have no guardian legally appointed to take charge of their persons and estates, and he therefore prays the honorable court to appoint such a guardian for them, and would respectfully recommend their mother Mrs. Elizabeth Remsen, as a suitable and competent person.

And he will ever pray, etc.

WM. F. SMALL,
For Minor Children, etc.

Philadelphia, Oct. 6, 1848.

Wm. F. Small being duly sworn according to law in open orphans' court, declares and says that the amount of property likely to come into his hands as the guardian of the minor children of George W. Remsen, deceased, will not exceed the sum of one hundred dollars ($100).

WM. F. SMALL.

Sworn to and subscribed in open orphans' court, this 6th day of October, 1848.

JNO. A. J. LEWIS,
Deputy Cl'k, O. C.

372 Endorsement.

In the matter of the estate of the minor children of George W. Remsen, deceased.

Petition for appointment of guardian.

O. C. Oct. 6, 1848.

Mrs. Elizabeth Remsen, g'd'n, without security.

Book No. 41, page 379.

In the Matter of the Estate of REMSON Minors.

On petition, Mrs. Elizabeth Remsen was appointed guardian of the persons and estates of Mary Ann, John Wesley, Elizabeth and George W. A. Remsen, minors, without security being required.

STATE OF PENNSYLVANIA, } ss:
County of Philadelphia, }

I hereby certify the foregoing to be a true and accurate copy of the petition of Wm. F. Small for minor children of George W. Remsen, deceased, and the decree of the court of October 6, 1848, thereon, also the docket entries, as the same appears of record in the office of the clerk of the orphans' court of the said county.

Witness my hand and seal of said court this 17th day of December, A. D. 1892.

[SEAL.]

WM. G. SHIELDS,
Clerk Orphans' Court.

373 "12-20-'92. H. R. E." Record of marriage of Jacob Heyer to Harriet A. Remsen, marked for identification.

DEFENDANTS' EXHIBITS.

No. 1. Certified copy of deed from John R. Tatum and wife to Samuel C. Tatum, of date June 5, 1873, for undivided ⅓ of S. W. ¼ 28, 29, 23; consideration, $3,350.

No. 2. Certified copy of bond from Allen Pierse to Pennock Pusey, of date May 29, 1854, for said S. W. ¼.

No. 3. Certified copy of deed from Allen Pierse and wife to Pennock Pusey, of date June 2, 1855, for said S. W. ¼, consideration, $3,000.

No. 4. Deed from Pennock Pusey to John W. Tatum, of date May 4, 1860, for said land, consideration, $3,200.

No. 5. Abstract of title.

No. 6. Certified copy of deed from Pusey to M. & P. R. R. Co., for right of way across said property, of date July 19, 1858, consideration, $1.00.

No. 7. Certified copy of deed from Nathan C. D. Taylor to C. D. Gilfillan, of date April 28, 1854, for said S. W. ¼, consideration, $600.

374 No. 8. Certified copy of bond for deed in Defendants' Exhibit No. 7.

No. 9. Certified copy of deed from C. D. Gilfillan to Henry McKenty of date April 28, 1854, for said land. Consideration, $1,000.

No. 10. Certified copy of deed from Henry McKenty to Allen Pierse of date May 22, 1854, for said land. Consideration, $2,000.

No. 11. Certified copy of deed from Samuel C. Tatum and wife and Hannah Tatum to St. P., M. & M. R'y Co. of date May 18, 1880, for westerly 60 acres of said southwest quarter. Consideration, $11,540.

No. 12. Map of Minnesota Transfer property.

No. 13. Page 16, volume 2 of Donnelly's Atlas of St. Paul.

No. 14. Dual city map.

No. 15. Map of St. Paul.

No. 16. Certified copy of power of attorney from Hannah Tatum to Samuel C. Tatum of date April 29, 1880, to sell and convey land in question.

375 United States Circuit Court of the District of Minnesota.

Term Minutes, June, A. D. 1893.

JULY 28, 1893, FRIDAY MORNING.

Court opened pursuant to adjournment.

Present: Hon. John A. Williams, judge.

ELIZABETH WETZEL *et al.*
vs.
MINNESOTA TRANSFER RAILWAY COMPANY *et al.* } C. Eq. 610.

This cause coming on to be heard upon the pleadings, final proofs and arguments of counsel the same is argued on behalf of the complainants by C. L. Bunn, and the hearing not being concluded at

the hour of adjournment, it is ordered that further proceedings herein be and they hereby are postponed until tomorrow morning at 10 o'clock.

T. M., vol 8, page 93.

United States Circuit Court for the District of Minnesota.

Term Minutes, June Term, A. D. 1893.

JULY 29, 1893, SATURDAY MORNING.

Court opened pursuant to adjournment.
Present: Hon. John A. Williams, judge.

ELIZABETH WETZEL *et al.*
vs.
MINNESOTA TRANSFER RAILWAY COMPANY *et al.* } Eq. C. 610.

This cause coming on to be further heard upon the pleadings, final proofs and arguments of counsel the same is argued on behalf of the defendants by C. K. Davis, and the trial of said cause not being concluded at the hour of adjournment, it is ordered that further proceedings herein be and they are hereby postponed until Monday morning at 10 o'clock.

T. M., vo. 8, page 95.

United States Circuit Court for the District of Minnesota.

Term Minutes, June Term, A. D. 1893.

JULY 31, 1893, MONDAY MORNING.

Court opened pursuant to adjournment.
Present: John A. Williams, judge.

ELIZABETH WETZEL *et al.*
vs.
MINNESOTA TRANSFER RAILWAY COMPANY *et al.* } C. Equity. 610.

This cause coming on to be further heard upon the final
376 proofs, pleadings and arguments of counsel the same is further argued by the solicitors for the respective parties, duly submitted and by the court taken under advisement.

T. M., vol. 8, page 96.

United States Circuit Court, Eighth Circuit, District of Minnesota, Third Division. In Equity.

ELIZABETH WETZEL, HARRIET A. VAN ZANT, EMMA F. HERGESHEIMER, Maggie L. Beckman, John Wesley Remsen, George W. Remsen, Mary J. Remsen, Clara B. Remsen, and Mabel Remsen, Complainants,

vs.

THE MINNESOTA TRANSFER RAILWAY COMPANY *et al.*, Defendants.

AUGUST 24, 1893.

W. C. Mayne, Clapp, Bramhall & Taylor, and Lusk, Bunn & Hadley, for complainants.

Davis, Kellogg & Severance, and C. H. Benedict, for defendants.

WILLIAMS, *J.*:

This action concerns one hundred and sixty acres of land, described in the complaint, situated in the corporate limits of the city of St. Paul, between that city and Minneapolis. Elizabeth Wetzel is alleged to be the widow of George W. Remsen, and the other complainants are their surviving children and grandchildren.

The bill states that George W. Remsen became, in his lifetime entitled to a land warrant, as a soldier in the United States Army, under the act of Congress February 11, 1847, the United States duly issued a land warrant for a hundred and sixty acres of land, in the name of Elizabeth Remsen, widow, Harriet A. Remsen, Mary Ann Remsen, John Wesley Remsen, Elizabeth Remsen and George W. Remsen, children and heirs-at-law of the said George, which warrant entitled them, under section 9 of said act, to locate it on any quarter section of Government land subject to private entry. That when the warrant was issued and assigned, all the complainants, but Elizabeth Remsen were under fourteen years of age, except Harriet A., who was seventeen.

That on or about October 6, 1848, the widow was duly appointed the guardian of the persons and estates of all the children except Harriet A. by the orphans' court of the city of Philadelphia. That on October 11, 1848, at Philadelphia in the State of Pennsylvania, she purporting to act for herself, and as guardian for said
377 minors, joined with said Harriet A. and together attempted to assign said land warrant by the instrument following, delivered and executed on that day to one Nathan C. D. Taylor:

"For value received, we, Elizabeth Remsen, widow, for myself and as guardian of the persons and estates of Mary Ann Remsen, John Wesley Remsen, Elizabeth Remsen, and George W. A. Remsen, minor children of the — George W. Remsen, deceased, duly appointed by the orphans' court of the city of Philadelphia, and Harriet A. Remsen, do hereby sell and assign unto Nathan C. D. Taylor all our right and title, and all the right and title of the minor children, to the within certificate or warrant No. 28811 for one hundred and sixty acres.

Witness *my* hands this 11th day of October, 1848, at Philadelphia, in the State of Pennsylvania.

her
ELIZABETH x REMSEN,
mark.
For Myself and as Guardian of the Minor Children of George W. Remsen, Deceased.
HARRIET A. REMSEN.

Attest:
ISAAC BOILEAU.
WM. F. SMALL.

Acknowledged before me this 11th day of October, 1848, at Philadelphia, in the State of Pennsylvania.

ISAAC BOILEAU,
Alderman and Justice of the Peace."

This sale and assignment, the bill charges to be void, because such court never made any order authorizing the guardian to assign the interests of the minors in the warrant, and also of the United States, to wit, the act of 1847, such guardian had no authority, without order of said orphans' court, to assign said estate of said minors.

The bill also alleges that the widow Elizabeth, by the law of Pennsylvania, had only a common-law dower interest in said real estate, which could not be sold or assigned before admeasurement; that Harriet was a minor and was at the time the wife of one Jacob Heyer, and that by the law of Pennsylvania her conveyance was void without her husband's signature. That she did not know what the instrument was, or that she had any interest in the warrant, or that her father had ever been entitled to the warrant, but
378 that she signed in such ignorance at the request of her mother, who represented that the signature was to a receipt, and of a formal character.

That she never received any consideration, and remained until within eight months prior to the filing of the bill in total ignorance as to the matter stated therein.

That Taylor as assignee located the warrant upon the southwest quarter of section twenty-eight in township twenty-nine, north of range twenty-three west, Minnesota, upon lands now situated in the county of Ramsey, on or about the 20th day of March, 1850, and that thereafter he received a patent from the United States bearing that date, of which the following is a copy:

"The United States of America to all — whom these presents shall come, Greeting:

Know ye that in pursuance of an act of Congress entitled 'An act to raise for a limited time an additional military force and for other purposes, approved February 11th, 1847,' Elizabeth Remsen, widow, Harriet A. Remsen, Mary Ann Remsen, John W. Remsen, Elizabeth Remsen and George W. A. Remsen, children, heirs-at-law of George W. Remsen, deceased, late a private of Company H,

Third regiment United States infantry, having deposited in the General Land Office a warrant in their favor numbered 28811; there is therefore granted by the United States unto Nathan C. D. Taylor, assignee of said Elizabeth Remsen, in her own right, and as guardian of the aforesaid minor heirs and to his heirs, the southwest quarter of section twenty-eight, in township twenty-nine north of range twenty-three west, in the district of lands subject to sale at Stillwater, Territory of Minnesota, containing one hundred and sixty acres, etc."

That said patent is recorded in the office of the register of deeds of Ramsey county, Minn.

That Taylor afterwards executed divers conveyances of the land by and under the patent passed to the numerous defendants named.

That said Mary Ann Remsen was born on August 12, 1835, and died June 12, 1882, leaving surviving her children and sole heirs-at-law, Emma F. Hergesheimer and Maggie L. Beckman.

John Wesley Remsen is one of the before-mentioned minor children of said George W., and was born on the 8th day of November, 1837. The said Elizabeth W. Remsen was born on the 22d
379 day of February, 1840, and died on the 11th day of October, 1862, unmarried and without issue, and her interest then descended to complainants, as provided by the statutes of Minnesota. Said George W. A. Remsen was born on the 18th day of September, 1842, and died in 1878, leaving Mary J. Remsen his widow, George W. Remsen, Clara B. Remsen and Mabel Remsen his children, said widow and children being his sole heirs-at-law.

Stipulation.

In December, 1889, Mr. William C. Mayne, one of the counsel for the complainants, knew that the land warrant in question had been issued to the widow and heirs of George W. Remsen, deceased, and knew of the assignment set up in the complaint, and that said land warrant had been located upon the southwest quarter of section twenty-eight (28), town twenty-nine (29) north, of range twenty-three (23) west, Stillwater land office, Minnesota, and a patent issued therefor to Nathan C. D. Taylor, and that he inspected, in said December, 1889, the land warrant, assignment, appointment of guardian (being Complainants' Exhibit No. 4 herein), and the patent, which papers were at the Land Office in Washington; that during the months of December, 1889, and January and February, 1890, the said Mayne communicated with all of the complainants except the heirs of George W. A. Remsen, deceased, the fact that a Mexican land warrant had been issued to the widow and heirs of George W. Remsen, deceased, for services in the Mexican war, and that there was a question as to the validity of the sale and assignment thereof, and a chance to claim the land located thereunder, without disclosing to them the location of the land located under said warrant; that the question of the giving of a power of attorney by the heirs to another party than himself for the purpose of bringing suit and making settlements for their interest in said lands was

discussed; the parties with whom said Mayne had the discussion declined at that time to execute such power of attorney, or any power of attorney until they were informed of the location of the land under such warrant and its value; this Mr. Mayne declined to give, because the parties for whom he was acting and who had discovered this alleged defect in the title had instructed him not to do so; that said negotiations continued until about May, 1890, when they were broken off without his having disclosed to them or any of the said heirs the location of said land or its value; that thereafter he did not act for or represent said Western parties, but did make a personal investigation for the purpose of ascertaining the exact location of this land, and the parties in possession under such warrant, and that on August 18th, 1891, he caused the
380 complainants to meet at his office, when he communicated to them for the first time the exact location of this land, to wit, that it was in the city of St. Paul, in the State of Minnesota, and fully discussed with them the matters stated in the bill, and that he thereafter acted as their attorney, and with their consent employed to assist him in the prosecution of their claims as to said land, the counsellors and solicitors named in the bill herein, and that previous to the said August 18th, 1891, said Mayne had not acted as attorney or agent of said plaintiffs or any of them in respect to any of the matters in controversy in this suit.

That William C. Mayne, one of the solicitors for the complainants herein, resides in the city of Philadelphia, Pennsylvania; that said Mayne visited St. Paul, on September 17, 1891, for the purpose of obtaining the opinion of local counsel in St. Paul as to the validity of the claim of the complainants herein, and if such opinion should be favorable to the validity of their said claim, to employ local counsel in said St. Paul, to act for said complainants, and with him in the preparation and presentation of their said claim to the court; that with that object in view he consulted Clapp, Bramhall & Taylor, attorneys residing in said St. Paul and solicitors for the complainants herein, particularly Mr. Bramhall of said firm.

That an abstract of the property in question in this suit, containing 983 entries, was made by the official abstract clerk of the county of Ramsey, Minnesota, the making of which took considerable time; that said Bramhall undertook to and did examine said abstract, and the facts and validity of plaintiffs' claim, and the legal questions involved therein, as expeditiously as he was able in connection with his other legal business.

That during all the times herein mentioned his partner Mr. Clapp of said Clapp, Bramhall & Taylor, was attorney general of the State of Minnesota, and as such fully occupied, and had no time to, and did not devote any time to any of the legal business of the said firm of Clapp, Bramhall & Taylor; that Mr. Taylor the other member of said firm was a young man just admitted to practice law from the law school, and without experience at the bar; that said Bramhall concluded his said examination the latter part of December, 1891, when said Mayne again visited St. Paul, to wit, on December 30, 1891, for the purpose of obtaining the report of said Bramhall

upon said matters, and making arrangements with his firm to act for complainants in this matter, and during said visit said Mayne did receive such report and make such arrangements.

That upon the advice and recommendation of said Bramhall that a suit of this character should not be brought unless
381 other local counsel also were of the opinion that the complainants had a good claim, Lusk, Bunn & Hadley, also attorneys in said St. Paul, and solicitors for the complainants herein were consulted in January, 1892, that they took the matter under advisement for about thirty (30) days for the purpose of making a personal examination of the legal questions involved, and did the same as quickly as possible in connection with their other legal work; that at the end of that time said Lusk, Bunn & Hadley consented to act as solicitors for complainants; that as soon as they consented to do so said Bramhall caused maps of the premises to be made, and the abstracts of the property in question to be continued, and examined the title to each piece, parcel and lot constituting a portion of the premises in question, and caused a search to be made in the offices of the clerk of the district court, of said Ramsey, and the circuit court of the United States for this district, for judgment liens against the owners of any of said property for the purpose of ascertaining the proper and necessary parties defendant in this cause; that there were 1,133 entries in the abstract of title to this property; and 95 entries as to judgments, to be examined and which he did examine, that when he had completed this examination and ascertained the claims of said parties, he went all over it again for the purpose of verifying and correcting the same.

That all of this involved an immense amount of hard and laborious work, which necessarily consumed a very large amount of time, that he did everything set forth herein as quickly and as expeditiously as he could, in connection with his other legal engagements and labors.

That at the same time said Bramhall was making this examination, as to parties, Bunn of said Lusk, Bunn & Hadley, was preparing the bill herein, and as soon as said Bramhall had completed said examination said bill was completed and sent to Mayne at said Philadelphia for examination, and was promptly returned by said Mayne, and as soon as returned put in the hands of the printer, and it and the subpœnas herein were printed as quickly as possible, and the bill herein filed on May 28th, 1892. That said bill and subpœnas were specially printed by reason of the large number of defendants herein, and to meet the supposed demand for the same.

That between August 15, 1891, and the time of the filing of the bill herein there *was*, as evidenced by said official abstract, seventeen (17) deeds given affecting eighteen (18) lots in Midway Heights and three (3) lots in Lovering's factory, warehouse and transfer
382 property, and thirteen (13) mortgages affecting eleven (11) lots in Midway Heights, and twenty (20) lots in Lovering's factory, warehouse and transfer property, all of which constituted a portion of the property in question.

Upon this statement of facts several propositions of law have been submitted by counsel on either side; but with my view of the case, it is utterly unnecessary, and would be productive of no good result, to notice any of them, save the one governing principle that applies to this case.

It is clear to my mind that the important question is the question of laches. This case comes so clearly within the doctrine announced by the Supreme Court of the United States in the case of Felix *v.* Patrick, 145 U. S. 317, that it is unnecessary in the decision of this case, to pass upon any of the other questions raised by counsel on either side. In that case Sophia Felix was an Indian of the Sioux tribe, residing upon their reservation, and owing to her tribal relations was for a long time unable to sue in the courts of the United States; she was the owner of certain land scrip which the defendant Patrick obtained from her under circumstances, as stated in the complaint that amounted to an absolute fraud upon her rights, and were but little removed from larceny of the scrip. The scrip was located upon the lands described in the suit, and after the lapse of twenty-eight years, and after the tribal relations has been severed, and the rights of herself and her heirs to maintain an action in the courts of the United States had accrued, suit was brought for the lands. The property in the meantime had increased in value greatly, so that its value at the time of bringing suit was over a million dollars. The court in that case uses the following language: "But conceding that the plaintiffs were incapable so long as they maintained their tribal relations, of being affected with laches, and that those relations were not dissolved until 1887 when they were first apprised of their rights to this land, it does not necessarily follow that they are entitled to the relief demanded by the bill. The real question is whether equity demands that a party who twenty-eight years ago was unlawfully deprived of a certificate or muniment of title of the value of $150 should not be put in possession of property admitted to be worth over a million. The disproportion is so great that the conscience is startled, and inquiry is at once suggested whether it be possible that the defendant has been guilty of fraud so gross as to involve consequences so disastrous. In a court of equity at least the punishment should not be disproportionate to the offense, and the magnitude of the consequences in this case demands of us that we should consider carefully the nature of the wrong done by the defendant in requiring the title to these lands."

383 The case at bar is a much stronger one than that of Felix against Patrick. In that case the scrip as has been stated, was obtained from the Indian woman by false representations and actual fraud. In the case at bar the land warrant was purchased from the widow of the deceased soldier Remsen, both in her individual capacity, and as guardian for her children and the children of the deceased soldier, and the full value thereof was paid to her in money. The land warrant was located upon lands in the then Territory of Minnesota, and was accepted by the officers of the land department of the United States, together with the assignment upon it, as being in all respects sufficient in law. The indorsement upon

it by the land officers was a description of the land upon which the scrip had been laid. The warrant was then forwarded to the proper department in Washington, and there it has lain ever since the indorsement upon it, from which the plaintiffs could at any time by a simple enquiry have ascertained upon what lands the warrant was laid, and thus have been enabled to institute this action within a reasonable time, if they thought they had any rights in the matter. Instead of doing that, however, they have allowed their rights, if they had any, and their claims to remain dormant for nearly half a century, until the lands that they now seek to obtain by this action are of the value of one million, and the improvements upon them of the value of two million dollars; until a large portion of the original quarter sections has been platted into blocks and lots upon which nearly three hundred people have purchased lots and erected houses. Upon a portion of the land iron rails have been laid, and a complicated system for the purpose of railway transfer has been arranged thereon over which is carried much of the traffic of two continents; and to say now that under these circumstances these plaintiffs are entitled to the remedy sought by this bill, would in my judgment be the monumental wrong of this age.

Courts of equity are generally asked to right some wrong or to grant some relief which cannot be obtained in a court of law; but in this case the plaintiffs originally had no wrong to complain of, they received the full value of the land warrant granted by the Government to their ancestor for his services in the war in Mexico. This is not only shown by the proof in the case, but is conceded by the learned counsel for the complainants; for these land warrants were valued by the Government at the sum of one hundred dollars, and any one entitled to a land warrant might receive that sum in lieu thereof. Here we find that Mrs. Remsen received for herself and as guardian of her children, the full sum of one hundred
384 dollars, and the purchaser of the land warrant paid all fees necessary to affect its transfer to him, so that plaintiffs have no standing upon the equities of the case in this court. They were not defrauded in any manner, as was the Indian in the case of Felix against Patrick, and I can conceive of no reason, why they should be entitled to invoke the aid of a court of chancery in this matter.

Let a decree be entered in this case for the defendants upon the original bill, and let the complainants take nothing by their suit, and further let the title of the defendants be forever quieted in and to the lands described in the complaint.

Indorsed: Decision. Judge Williams, ordering decree for defendants. Filed Aug. 25, 1893. Oscar B. Hillis, clerk.

United States Circuit Court, District of Minnesota, Third Division.

ELIZABETH WETZEL, HARRIET A. VAN ZANT, EMMA F. HERGESHEIMER, Maggie L. Beckman, John Wesley Remsen, Marie J. Remsen, George W. Remsen, Clara B. Remsen, and Mabel Remsen, Complainants,

vs.

THE MINNESOTA TRANSFER RAILWAY COMPANY *et als.*, Defendants.

Affidavit of Disbursements and Notice of Taxation of Costs.

Disbursements.

Docket fee	$20 00
Printer's fees, printing brief	137 55
Paid Ambrose Tighe, examiner, taking testimony and transcribing same, including stenographer	130 26
Paid Henry Edmunds, examiner, Philadelphia	46 38
Paid for searching records, certified copies of records probate court, Philadelphia	10 00
Paid for certified copies records in Washington, including land warrant copies probate records attached	10 00
Paid for certified copied deeds introduced in evidence	10 50
Paid for printing answers, cross-bill and exhibits	54 75
Paid for abstracts of property	58 50

385 Witnesses as follows:

J. L. Lovering, St. Paul, Minn.,		1 day, 2 miles	1 60
Geo. L. Hendrickson,	"	1 day, 12 miles	2 10
H. S. Fairchild,	"	1 day, 2 miles	1 60
J. B. Rossman,	"	1 day, 12 miles	2 10
Geo. H. Hazzard,	"	1 day, 12 miles	2 10
Charles H. Pratt,	"	1 day, 12 miles	2 10
James J. Hill,	"	1 day, 2 miles	1 60
David C. Sheppard,	"	1 day, 2 miles	1 60
D. M. Sullivan,	"	1 day, 12 miles	2 10
John B. Sanborn,	"	1 day, 2 miles	1 60
Simeon P. Folsom,	"	1 day, 2 miles	1 60
Chas. D. Gilfillan,	"	1 day, 236 miles	13 30
Pennock Pusey, Titusville, Penn.,		2 days, 236 miles	33 00
John R. Tatum, Wilmington, Del.,		2 days, 100 miles	8 00
Hannah Tatum, Phil., Penn.,		2 days, 2 miles	3 10
			555 44
Less amount deducted by consent			99 00
			$454 44
Clerk's fees (def'ts)			23 15
			$477 59

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Frank B. Kellogg being first duly sworn, doth depose and say that he is one of — attorney- of the defendants in the above-entitled cause; that the foregoing is a true and correct statement of the costs and disbursements of said defendants in the above-entitled proceedings, and that all of the items of such disbursements have been actually and necessarily paid or incurred therein, by and on behalf of said defendants; that each of said witnesses above named was a necessary and material witness for the defendants; that the first twelve witnesses above named were present and sworn and testified in said cause within this State that they each traveled the number of miles within this State in going to and returning from the place of hearing of said cause and attended court before a referee the number of days set opposite their names; that the last three named witnesses traveled each the number of miles to attend said hearing and attended the number of days set opposite their names.

FRANK B. KELLOGG.

Subscribed and sworn to before me on this 3rd day of October, A. D. 1893.

[NOTARIAL SEAL.] C. W. G. WITHEE,
Notary Public, Ramsey Co., Minn.

386 SIR: Please take notice that the costs and disbursements of the defendants in the foregoing-entitled action will be taxed by and before Oscar B. Hillis, clerk of the above-named court at his office in the custom-house, at the city of St. Paul, Minnesota, on Friday, the sixth day of October, 1893, at ten o'clock in the forenoon of said day, and that the foregoing is a statement of the items of costs and disbursements that will then and there be claimed on behalf of said defendants and inserted in the judgment in said action that will then and there be entered.

Very respectfully,
DAVIS, KELLOGG & SEVERANCE,
Attorneys for Defendants.

Lusk, Bunn & Hadley, W. D. Mayne, and to Clapp & Bramhall, attorneys for complainants.

Indorsed: Affidavit of disbursements and notice of taxation of costs. Due service of the within notice is hereby admitted this 4th day of October, 1893. Lusk, Bunn & Hadley, pl'ffs' att'y-. Filed Oct. 13, 1893. Oscar B. Hillis, clerk.

In the Circuit Court of the United States for the District of Minnesota, Third District. In Equity.

ELIZABETH WETZEL, HARRIET A. VAN ZANT, EMMA F. HERGESHEIMER, Maggie L. Beckman, John Wesley Remsen, Mary J. Remsen, George W. Remsen, Clara B. Remsen, and Mabel Remsen, Complainants,

vs.

THE MINNESOTA TRANSFER RAILWAY COMPANY, GREAT NORTHERN Railway Company, Maitland E. Graves, Lucia Clark, Florence Lucia Clark, Archie Guthrie Clark, Fred Morse Clark, Louisa E. White, William O. Winston, Fendall G. Winston, Philip B. Winston, David C. Shepard; Peter Siems, Frank P. Shepard, Alvin W. Krech, James F. Jackson, William Deering, Rufus C. Jefferson, Charles F. Backus, L. L. Bennett, George Wilson, Jr., Nels P. Fransen, James L. Lovering, Leonard W. French, Hiram Backus, Lilton E. Shields, William H. Cleary, John A. Cleary, George Strong, Emily R. Fisher, Frank H. McKelvey, Franklin C. Ford, George F. Copeland, Dora Marshall, Clinton Johnson, Leonard J. Dobner, Isabella Z. Kingsley, The Ramsey County Land & Loan Company, Henry S. Fairchild, Elizabeth Brophy, Edward Howard, Carrie L. Backus, Julia M. Callahan, Lewis H. Lipman, Mary C. Braden, Joseph A. Humphreys, Samuel M. Magoffin, Eleanor Tatum, Amy T.
387 Hilles, Elizabeth T. Long, John Weber, William W. Bixby, Charles L. Walker, William H. Wright, Clarence E. Stone, Frank Crawshaw, Frank Greening, Desire H. Michaud, Josephine A. Huber, Lydia J. Andrew, Herbert M. Crosby, Clinton J. Backus, Amanda E. Johnson, Charles A. Baker, Luther B. Little, George H. Bridgman, John B. Sanborn, Emma E. Chapman, Henry C. V. Hunderup, Benjamin W. Smith, Jed. L. Washburn, Maurice Tracy, Maurice C. Tracy, William H. Fuller, John B. Rossman, Sidney E. Bibbins, Charles E. Lingquist, Charles E. Lindquist, Harcourt Mott, Ola S. Johnson, N. B. Hogg, Jr., E. J. Fargo, John H. Moreland, Willis Danforth, James R. McKay, Kingsley H. Burrell, Caroline M. Burrell, Edith E. Thomas, John Luby, Samuel Strows, Mary C. Thaw, Emily H. Miller, Jennie A. Severn, Thomas W. Martin, Henry Bosse, Kate L. McDermott, John Johnson, Henry C. Babcock, George Lamb, Michael Towey, Charrie A. Morton, Dan. Baker, James C. Hening, Rachel H. Henning, Addie B. Mohler, Robert C. Wiley, Fannie W. Wiley, Tinsley V. Means, Ella B. Clark, Martin Johnson, Andrew G. Johnson, John Aronson, Henry L. Little, Hans Peterson, Owen Williams, Conrad Peters, Levi C. Emery, George R. Bartron, Charles F. Young, Mary Jane Ellison, Agnes A. Hamilton, W. J. O'Toole, M. E. Nelson, Frank A. Ackerman, Cybele B. Flower, Clara W. A. Blackman, Charles W. Heath, Nels Frederickson, Anson B. Baker, Anton Peterson, Robert K. Evans, Richard Evans, Jr., Richard Eavans, Jr., Joseph J. Vilsmeyer, Christian Bendixen, Charles P. Bartsow, Mary C. Tatum, The St. Paul Congregational Union of Ramsey County, Minnesota; Marion E. Mar-

tin, Mary Brosnahan, Bridget I. O'Leary, Annie M. O'Leary, Bridget Eagan, Mary Eagan, Maria C. Killiam, Thomas Helgesen, The State Bank of Minneapolis, Orin L. Benson, Frank W. Buswell, Lizzie J. Smith, Wallace W. Campbell, George G. Benz, Oliver J. Graham, Freeman J. Page, Erastus H. Murray, Emma G. Lockwood, Michael O'Neill, Sadie E. Martin, Luther B. Little, Thomas G. Harvey, M. P. Ryan, Augusta A. Garrison, James O. Roberts, Jacob A. Roberts, William G. Chapman, John A. Lindquist, Mary C. Crawshaw, William W. Holcomb, Anthony Schimansky, Edward B. Storer, Paul J. Lowell, Elise Hohneck, Lily M. Brown, Hans Monson, Charles O. Moline, Emil Moline, John Larson, Lewis Larson, Carrie Larson, Annie Larson, Andrew Olson, John August Peterson, John H. Cunningham, Thomas A. Carlson, Klaus J. Larson, Prindle Partridge, Eli S. Montri, Laurits A. Larsen, Christopher Bendixen,
388 William R. Murray, Frederick Bell, Carrie A. Morton, E. I. Hoyt, Mary Little, John Olson, August Olson, Albin Severson, Eleanora Langevin, Mary Eleanora Michaud, Emma Flanagan, Louis A. Langevin, Eugene A. Langevin, and Ida May Langevin, Sole Legatees and Heirs of Edward Langevin, Deceased; The St. Paul Trust Company, Mary H. Farquhar, Peter S. Roberts, Wm. H. Willsey, Hannah Austrian, The German-American Building Association, The Lombard Investment Company, Maria W. Curtis, William K. Richardson and Winslow Warren, Trustees under the Will of Henry Richardson, Deceased; William Brewster, Edward Motley, Maria A. Gilbert, Charles H. Wagner, I. F. Johnson, Gardiner Green, Jr., Executor of the Will of Rachel R. Wheeler, Deceased; W. B. Hopkins, The Savings Bank of St. Paul, J. W. Frederick, Alfred F. Cooley, Oramel A. Richardson, John W. Bookwalter, as James Leffel & Co.; The National Bank of Chambersburg, N. F. Towne, Mary M. Bacon, William B. Martin, John J. Guile, George Griffore, The Rice Street Building Society, Caroline Coleman, Mark W. Fay, Wilhelmina F. Phelps, The Simonds Manufacturing Company, Frank A. Berry, Howard Marston, The Workingmen's Building & Loan Society, The Ramsey County Building Society, Sarah C. Moore, Nora Brown, The Iowa Land Company, Limited; Elmer J. Barker, Martha R. Knauff, Pauline A. Hannaford, Horace E. Stevens, Dwight F. Brooks, Lester R. Brooks, and Anson J. Brooks, Partners as Brooks Brothers; L. G. Kilborn, Eleanor Tatum, Administratrix of the Estate of Samuel C. Tatum, Deceased, and Samuel C. Tatum, Jr., Deceased; Homar C. Potter, The Globe Building Company, F. L. Elwer, L. G. Crandall, C. M. Stone, W. H. Stone, and C. E. Tichener, Partners as Crandall, Stone & Company; William W. Parker, Thomas Tracy and Lawrence Tracy, Partners as Tracy Brothers; William F. Nelson, The Bank of Minneapolis, Andrew Borklund, The J. P. Gribben Lumber Company, C. H. McCormick and L. J. McCormick, Partners as C. H. & L. J. McCormick; William Peterson and Samuel B. Jelke, Partners as William Peterson & Company;

Anthony Kelly, Hiram J. Wagner and John I. Black, Partners as Anthony Kelly & Company; William A. Campbell and George R. Lewis, Partners as Campbell & Lewis; Chester G. Higbee, Charles Bergquist, Gilbert E. Holien and Charles B. Blomgren, Partners as Holien & Blomgren, *Partners as Holien & Blomgren;* The St. Croix Lumber Company, Ole Oleson, Frederick D. Ford, Frank W. Foreman, Frank B. Foreman and Edward F. Upton,
389 Doing Business as the St. Paul Stained Glass Company; The Bohn Manufacturing Company, B. F. Knauft; Lawrence I. Casserly and James R. Donnelly, Partners as Casserly & Donnelly; John J. Biebighauser; George W. McGuiggan and Neil Kelliher, Partners as McGuiggan & Kelliher; The Chapman-Drake Company, William Salisbury; Abraham Harris and Mark Harris, Partners as Harris Brothers; The Todd Pulley and Shafting Works, Earnest D. Babcock; W. P. Riley, Doing Business as Valley Iron Works; The Allington & Curtis Manufacturing Company; W. C. Armstrong, James J. Armstrong, and Bernard B. Armstrong, Partners as Armstrong Brothers; Isaac B. Davis and John O. Davis, Partners as J. B. Davis & Son; Hanford J. Perkins and Willis J. Perkins, Partners as Perkins & Company; W. B. Dean, J. Ross Nicols, Sarah T. Nicols, Sarah C. Nicols, Emma N. Pilkington, Henry Nicols, and Jessie A. Gregg, Partners as Nicols & Dean; The Canton Steam Pump Company; A. N. Nelson, Treasurer of Ramsey County, Minnesota; W. E. Burton, Treasurer of Ramsey County, Minnesota; F. A. Renz, Treasurer of Ramsey County, Minnesota; J. F. Wilcox, Frank Morand, The Gordon Steam Pump Company, William G. Mulligan, The St. Paul Foundry Company, Dan. Baker, Daniel A. J. Baker, George P. Clark, Levi Houston; F. E. Elmund and Gus Carlson, Partners as Elmund & Carlson; The Woolson Spice Company; Richards Gordon and Paul D. Ferguson, Partners as Gordon & Ferguson; Andrew Schoch, The J. C. Hanley Lime Company; Robert Pearce and Charles P. Price, Partners as Pearce & Company; William Cunningham; Daniel B. Fisk, Daniel M. Fisk, and John E. L. Frasher, Partners as D. B. Fisk & Company; The German-American Hail Insurance Company, Andrew Johnson, James Davenport, Jr., William Poppenberger, F. C. Nelson, The Vulcan Iron Works; F. M. Schutte, Doing Business as Schutte & Company; The Northwestern Fuel Company; Geo. W. Griggs and Emery G. Griggs, Partners as Grigg Brothers; Daniel M. Finlayson, Daniel H. Moon, and Edgar C. Long, Partners as D. M. Finlayson & Company; William Rodger and John D. Roberts, Partners as Rodger & Company; Eugene R. Ide and James R. Thompson, Partners as Ide & Thompson; J. B. Gazett; The St. Paul Trust Company, as Assignee of the Estate of Henry Marine and Peter Zimmer, Partners as Marine & Zimmer; Thomas Jefferson; P. J. Bowlin, Doing Business as P. J. Bowlin & Company; The Cleveland Brown & Company, The H. P. Rugg & Company, James L. Lovering, Henry S. Fairchild, Eleonor Tatum, Hannah Tatum, John B.

390 Rossman, William R. Murray, Charles P. Barstow, Clarence E. Stone, Mary C. Tatum, Amy T. Hilles, and Elizabeth T. Long, Defendants.

This cause came on to be heard upon the pleadings and proofs before the court at the June term thereof, and after hearing the counsel for the respective parties, and upon due consideration by the court it is—

Ordered, adjudged and decreed that said complainants take nothing by this action, and that defendants have and recover of said complainants their costs and disbursements in this cause, to be taxed by the clerk, and that they have execution therefor.

JNO. A. WILLIAMS,
U. S. Dist. Judge.

Costs taxed at $477.59.

Indorsed: Decree for defendants. Filed Nov. 6th, 1893. Oscar B. Hillis, clerk. Approved as to form. C. W. Bunn.

Assignment of Errors.

Circuit Court of the United States, District of Minnesota, Third Division.

ELIZABETH WETZEL *et als.*, Plaintiffs and Appellants,
vs.
MINNESOTA TRANSFER RAILWAY COMPANY *et als.*, Defendants and Appellees.

Now comes the said plaintiffs and appellants above named and say, that in the record and proceedings in this cause there are manifest errors and they assign the following errors, to wit:

1st. The court erred in not ruling and adjudging and decreeing that the sale of the land warrant by the widow and heirs of George W. Remsen was not absolutely null and void as alleged in the bill of complaint.

2nd. The court erred in not adjudging and decreeing that the sale of said land warrant was at least absolutely null and void as to the children of said Geo. W. Remsen who were minors at the date of said sale.

3rd. The court erred in not adjudging and decreeing that the sale and assignment of said land warrant was at least absolutely null and void as to the minor children of said George W. Remsen for and on behalf of whom his widow executed the said assignment.

391 4th. The court erred in not adjudging and decreeing that said minor children referred to in the last assignment were under no obligation to disaffirm said sale and assignment after coming of age.

5th. The court erred in not adjudging and decreeing that the sale and assignment of said land warrant was a conveyance of real estate.

6th. The court erred in not adjudging and decreeing that the

vendee of said land warrant as well as purchasers under him, including the defendants in this case, were trustees of the legal title to said lands or some part of them or interest therein and bound in equity to convey to the plaintiffs or part of them as prayed and alleged in the bill of complaint.

7th. The court erred in not adjudging and decreeing that the plaintiffs or some of them were the equitable owners of the real estate described in the bill or some part thereof or interest therein.

8th. The court erred in not adjudging and decreeing that the defendants in this case were purchasers with full notice and the equities of the plaintiffs and each of them.

9th. The court erred in adjudging and decreeing that the plaintiffs or any of them were guilty of such delay or laches as to bar their right to recover the premises described in the bill in this suit.

10th. The court erred in adjudging and decreeing that the complainants take nothing in said suit.

11th. The court erred in adjudging and decreeing that the bill of complaint in this suit be dismissed.

Dated May 3rd, 1894.

WM. C. MAYNE,
BUNN & HADLEY,
Plaintiffs' Attorneys.
C. W. BUNN, *Of Counsel.*

(Indorsed:) Assignment of errors. Filed May 3rd, 1894. Oscar B. Hillis, clerk.

UNITED STATES OF AMERICA:

Circuit Court of the United States, District of Minnesota, Third Division.

I, Oscar B. Hillis, clerk of said circuit court, do hereby certify and return to the honorable the United States circuit court of appeals for the eighth circuit, that the foregoing, consisting of 400 392 pages, numbered consecutively from one to 400 inclusive, is a true and complete transcript of the records, process, pleadings, orders, final decree and all other proceedings in said cause and of the whole thereof, as appears from the original records and files of said court; and I do further certify and return that I have annexed to said transcript and included within said paging, the original citation, together with the proof of service thereof.

Seal U. S. Circuit Court, Third Division, District of Minnesota.

In witness whereof, I have hereunto set my hand, and affixed the seal of said court, at Saint Paul, in the District of Minnesota, this 7th day of June, A. D. 1894.

OSCAR B. HILLIS, *Clerk.*

Filed June 29, 1894.

JOHN D. JORDAN, *Clerk.*

United States Circuit Court of Appeals for the Eighth Circuit.

ELIZABETH WETZEL *et als.*, Complainants and Appellants,
vs.
THE MINNESOTA TRANSFER RAILWAY COMPANY *et als.*, Defendants and Respondents.

It is hereby stipulated and agreed by and between the parties to the above-entitled cause that on the appeal taken herein by the complainants herein to this court from the decree of the United States circuit court for the district of Minnesota, third division, the answer interposed in this case by Bridget Egan *et als.*, may and shall be used and considered by this court on such appeal as the answer of all the defendants herein; and further, that the decision of this court upon such appeal shall have the same force and effect as if all the various answers interposed herein were before this court on such appeal.

Dated May 10, 1894.

WM. C. MAYNE,
BUNN & HADLEY,
Solicitors for Complainants and Appellants.
DAVIS, KELLOGG & SEVERANCE,
Solicitors for Defendants and Respondents.

Original. United States circuit court of appeals for the eighth circuit. Elizabeth Wetzel *et als. vs.* The Minnesota Transfer Railway Company *et als.* Stipulation. No. 496. Elizabeth Wetzel *et et al.*, appellants, *vs.* Minnesota Railway Transfer Co. *et al.* Stipulation as to answer of Bridget Egan *et al.* Filed June 29, 1894. John D. Jordan, clerk.

393 And on the twenty-ninth day of June, A. D. 1894, an appearance of counsel for appellants was filed in the clerk's office of said circuit court of appeals in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1894.

ELIZABETH WETZEL *et al.*, Appellants,
vs.
THE MINNESOTA RAILWAY TRANSFER CO. *et al.* } No. 496.

The clerk will enter *my* appearance as counsel for the appellants.

C. W. BUNN.
WM. ELY BRAMHALL.

Endorsed: "U. S. circuit court of appeals, eighth circuit. May term, 1894. No. 496. Elizabeth Wetzel *et al.*, appellants, *vs.* Minnesota Railway Transfer Co. *et al.* Appearance. Filed Jun- 29, 1894. John D. Jordan, clerk. C. W. Bunn, Wm. Ely Bramhall, St. Paul, Minn., counsel for appellants."

And on the twenty-ninth day of June, A. D. 1894, there was filed in the clerk's office of said circuit court of appeals a stipulation as to use of original exhibits on appeal in words and figures following, to wit:

United States Circuit Court of Appeals for the Eighth Circuit.

ELIZABETH WETZEL *et al.*, Appellants,
vs.
THE MINNESOTA TRANSFER RAILWAY COMPANY *et als.*, Respondents.

It is hereby stipulated and agreed by and between the parties to the above-entitled cause that none of the exhibits nor any part thereof introduced in evidence upon the trial of this cause
394 need be printed in the copies of the record for use in this court, and that this cause in this court may be heard and determined upon the printed copies of all of the balance of the record on the appeal to this court from the decree appealed from, which was entered in the United States circuit court for the district of Minnesota, third division, on November 6, 1893, and upon the original exhibits herein, to be certified to this court as a part of the record herein from such circuit court, with the same force and effect as if copies of such exhibits had been made a part of such record and copies thereof had been printed in the copies of the record for use in this court.

Dated May 3, 1894.

W. C. MAYNE,
BUNN & HADLEY,
Solicitors for Appellants.
DAVIS, KELLOGG & SEVERANCE,
Solicitors for Respondents.

Endorsed: "No. 496. Elizabeth Wetzel *et al.*, appellants, *vs.* Minnesota R'y Transfer Co. *et al.* Stipulation as to use of original exhibits in circuit court of appeals. Filed Jun- 29, 1894. John D. Jordon clerk."

And on the thirteenth day of July, A. D. 1894, an appearance of Mr. W. C. Mayne as counsel for appellants was filed in the clerk's office of said circuit court of appeals in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1894.

ELIZABETH WETZEL *et al.*, Appellants,
vs.
THE MINNESOTA RAILWAY TRANSFER COMPANY. } No. 496.

The clerk will enter my appearance as counsel for the appellants.
WILLIAM C. MAYNE.

395 Endorsed: "U. S. circuit court of appeals, eighth circuit, May term, 1894. No. 496. Elizabeth Wetzel *et al.*, appellants, *vs.* The Minnesota Railway Transfer Company. Appearance. Filed Jul- 13, 1894. John D. Jordan, clerk. William C. Mayne, law offices, 926 Walnut St., Philadelphia, U. S. A., counsel for appellants."

And on the eleventh day of October, A. D. 1894, an appearance of counsel for appellees was filed in the clerk's office of said circuit court of appeals in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1894.

ELIZABETH WETZEL *et al.*, Appellants,
vs.
THE MINNESOTA RAILWAY TRANSFER CO. *et al.* } No. 496.

The clerk will enter *my* appearance as counsel for the appellees.

C. K. DAVIS.
F. B. KELLOGG.
C. A. SEVERANCE.

Endorsed: "U. S. circuit court of appeals, eighth circuit, May term, 1894. No. 496. Elizabeth Wetzel *et al.*, appellants, *vs.* Minnesota Railway Transfer Co. *et al.* Appearance. Filed Sep. 11, 1894. John D. Jordan, clerk. C. K. Davis, F. B. Kellogg, & C. A. Severance, counsel for appellees."

And on the twenty-third day of October, A. D. 1894, in the record of the proceedings of said circuit court of appeals is an order of submission in said cause in the words and figures following, to wit:

396 United States Circuit Court of Appeals, Eighth Circuit, May Term, 1894.

TUESDAY, *October* 23, 1894.

ELIZABETH WETZEL *et al.*, Appellants,
vs.
THE MINNESOTA RAILWAY TRANSFER COMPANY *et al.*, Appellees. } No. 496.

Appeal from the circuit court of the United States for the district of Minnesota.

This cause having been heretofore passed to this day was called for hearing and argument was commenced by Mr. C. W. Bunn on behalf of appellants, continued by Mr. C. K. Davis for appellees, and concluded by Mr. W. C. Mayne in behalf of appellants.

Thereupon this cause was submitted to the court on the transcript of record from said circuit court and the briefs of counsel filed herein.

And on the tenth day of December, A. D. 1894, an opinion of said United States circuit court of appeals was filed in said cause in the following words, to wit:

397 United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1894.

ELIZABETH WETZEL, HARRIET A. VAN ZANT, EMMA F. HERGESHEIMER, MAGGIE L. BECKMAN, JOHN WESLEY REMSEN, MARY J. REMSEN, GEORGE W. REMSEN, CLARA B. REMSEN, and MABEL REMSEN, Appellants,
vs.
THE MINNESOTA RAILWAY TRANSFER COMPANY *et al.*, Appellees.

No. 496. Appeal from the Circuit Court of the United States for the District of Minnesota.

Mr. C. W. Bunn and Mr. William C. Mayne (Mr. William E. Bramhall on brief) for the appellants.

Mr. C. K. Davis (Mr. F. B. Kellogg and Mr. C. A. Severance were with him on brief) for the appellees.

Before Caldwell, Sanborn, and Thayer, circuit judges.

Statement.

This was a suit by the appellants, who were complainants in the circuit court, to establish their title to an undivided interest in a certain tract of land situated in Ramsey county, Minnesota, to wit, the southwest quarter of section twenty-eight, township twenty-nine north, range twenty-three west, which was patented by the United States to Nathan C. D. Taylor on the 20th of March, 1850, as assignee of Elizabeth Remsen, in her own right, and as guardian of the minor heirs of George W. Remsen, deceased. The facts out of which the controversy arose may be stated with substantial accuracy, as follows:

George W. Remsen was a soldier in the Mexican war, and by virtue of his enlistment and service, he became entitled, under the provisions of the ninth section of an act of Congress approved on February 11, 1847, to one hundred and sixty acres of land.
398 9 Statutes, p. 123, 125. Said Remsen died in the service in the month of October, 1847, and under the provisions of said act, his right to said land inured to the benefit of his surviving wife and children. On September 30, 1848, a warrant was duly issued to Elizabeth Remsen, widow of said George W. Remsen, and to Harriet A., Mary Ann, John W., Elizabeth and George W. A. Remsen, children and heirs-at-law of said George W. Remsen, deceased, who was described in the warrant as "late a private in Company K, Third regiment United States infantry." At the time of the issuance of said warrant all of said children were minors, Harriet A. Remsen, the oldest child, being then about seventeen years of age. Section nine of the act of February 11, 1847, aforesaid, provided in

substance that in the event of the issuance of a land warrant under said act to the minor children of a deceased soldier, " then the legally constituted guardian of such minor children shall, in conjunction with such of the children, if any, as may be of full age, *upon being duly authorized by the orphans' or other court having probate jurisdiction*, have power to sell and dispose of such certificate or warrant for the benefit of those interested."

Elizabeth Remsen qualified as guardian of all the minors aforesaid except Harriet A. the oldest, before the orphans' court of the county of Philadelphia, State of Pennsylvania, on October 6, 1848. Subsequently and on the 11th of October, 1848, she sold and assigned the land warrant in question to Nathan C. D. Taylor, who located the same on the land now in controversy, and received a patent therefor as heretofore stated. The assignment of said land warrant was executed by said Elizabeth Remsen, the mother, in her own behalf, " and as guardian of the minor children of George W. Remsen, deceased ;" but she appears to have obtained no order from the orphans' court aforesaid authorizing her to sell her children's interest therein. The assignment of the land warrant was also executed by Harriet A. Remsen, the oldest daughter, who had previously become the wife of Jacob Heyer, but her husband did not join with her in the execution of the assignment.

By numerous mesne conveyances covering a period of many years, the title to the aforesaid tract of land thus acquired by Nathan C. D. Taylor has now become vested in very many persons who are in possession of different parcels of the land and who were made parties defendant to the bill of complaint.

All of the aforesaid minor children of George W. Remsen, deceased, lived to attain their majority and for some years thereafter. The youngest of them, George W. A. Remsen, attained his majority as early as the year 1863, the others, except Harriet A. in the years 1856, 1858 and 1861.

Elizabeth Wetzel, one of the appellants, is the former wife of George W. Remsen, who died in October, 1847, she having married Paul Wetzel since the death of her first husband. Harriet A. Van Zant, another of the appellants, is the oldest daughter of said George W. Remsen, who joined with her mother in the sale and assignment of the land warrant as heretofore stated. John Wesley Rem-
399 sen, also one of the appellants, is a son of George W. Remsen, deceased. The other children of said deceased heretofore named, to wit: Mary Ann, Elizabeth and George W. A. Remsen, appear to be dead, and their interests are represented in the present proceeding by the other appellants, to wit: by Emma F. Hergesheimer and Maggie L. Beckman, who were the daughters of Mary Ann Remsen, and by Mary J. Remsen and her children, George W., Clara B. and Mabel Remsen, who are respectively the widow and lineal descendants of George W. A. Remsen, now deceased. Elizabeth Remsen appears to have died leaving no lineal descendants.

It was claimed in behalf of the appellants that the sale and assignment of the aforesaid land warrant was utterly void as to the

interests of all the minor children of George W. Remsen other than Harriet A., who joined in the assignment of the same, because the assignment made by their mother and guardian was not authorized by any order or decree of the orphans' court of the county of Philadelphia, as the act of Congress required. They therefore, prayed that the title of such minor heirs to an undivided interest in the tract of land aforesaid might be established, and that the defendants holding under the patent issued to Nathan C. D. Taylor might be adjudged to hold the legal title so acquired in trust for the appellants, and that they be compelled to convey the legal title to the appellants. On the final hearing the proceeding was dismissed on the ground of laches.

THAYER, J., after stating the case as above, delivered the opinion of the court:

The bill of complaint in this suit appears to have been filed in the circuit court of the United States for the district of Minnesota, on the 28th day of May, 1892, nearly forty-four years after the land warrant which was issued to the widow of George W. Remsen and to his minor children was sold and assigned by the widow, acting for herself and as guardian of said minors, to Nathan C. D. Taylor, under whom the defendants now claim. When the suit was instituted, more than forty-two years had come and gone since Taylor had located the warrant on the lands in controversy and had obtained a patent therefor from the United States, and nearly thirty years had elapsed since the youngest minor child of George W. Remsen had attained his majority. In the meantime, two large cities, Minneapolis and St. Paul, had grown up in the immediate vicinity of the place where Taylor had located the warrant; for a number of years prior to the commencement of the suit, the property in question was within the outboundaries of one of these cities; it had been to a large extent subdivided into lots and blocks; it had become of immense value and had been sold in separate parcels to numerous purchasers who had made extensive improvements thereon. Some idea may be formed of the extent to which the property in question has changed hands, and of the number of persons whose interests are injuriously affected by the present litigation, from the admitted fact that there are more than
400 1,200 entries in the abstract of title, which counsel for the complainants found it necessary to procure before the bill of complaint in the present suit could be intelligently drawn. These general facts, with respect to which there is no dispute, are sufficient, we think, to justify us in ignoring all other questions and in directing our attention primarily, to the important inquiry whether, in view of the long period that has elapsed since the wrong complained of was committed, and since the minor heirs of George W. Remsen attained their majority, they and their descendants have shown such reasonable diligence as will serve to excuse the long delay in asserting their rights, and entitle them to relief in a court of equity.

The doctrine of laches has so often been applied by the Supreme Court of the United States and by this court, in cases bearing a

strong likeness to the one at bar, that we deem it unnecessary in this opinion to enter into a general discussion of the subject. It is now well settled, that, while the defence of laches is ordinarily available in equity in those cases where the plea of the statute of limitations would be effectual at law, yet in many instances, depending on a variety of circumstances, laches will be regarded as a good defense even where the plea of the statute would not be available at law. The plea of laches does not always depend for its support upon mere lapse of time, but upon the manifest inequity of permitting the claim to be enforced in view of some change in the condition of the property or in the relations of the parties to the controversy. It is also a well established rule that when a suitor applies to a court of chancery for relief, for any considerable length of time after the wrong complained of was committed, it is incumbent on him to show, both by averment and proof, some sufficient excuse to justify the delay. This latter rule requiring a suitor to plead and prove some adequate excuse for his silence and inaction in every instance where there has been an apparent want of diligence, is applied and enforced with great strictness in those cases where a person seeks to fasten upon another a constructive trust with respect to personal or real property, and in those cases as well, where the property in controversy has rapidly appreciated in value, or has been improved by those in possession, or when the rights of numerous third parties have intervened and attached. These principles have been recognized and applied in such a great variety of cases that it is hardly necessary to do more at present than to refer to a few of the leading authorities where they have been clearly stated and rigidly enforced. *Badger v. Badger*, 2 Wall. 87, 95; *Godden v. Kimmell*, 99 U. S. 201; *Galliher v. Cadwell*, 145 U. S. 368; *Felix v. Patrick*, 145 U. S. 317; *Naddo v. Bardon*, 4 U. S. App. 642; *id.* 2 C. C. A. 335; *Lemoine v. Dunklin County*, 10 U. S. App. 227: *id.* 2 C. C. A. 343; *St. Paul, Stillwater & Taylor's Falls Railroad v. Sage*, 4 U. S. App. 160; *id.* 1 C. C. A. 256; *Ashhurt's Appeal*, 60 Pa. St. 290.

In the case at bar, the complainants have attempted, in accordance with the foregoing rule, to show by their bill and their proofs that their long silence and inaction, extending over a period of twenty-nine years after the youngest child of the deceased
401 soldier attained his majority, was due to causes beyond their control, which should be accepted as a valid excuse by a court of equity. With reference to the excuse so pleaded, it may be said that the plaintiffs allege in substance that none of the minors, except Harriet A. Remsen, who joined with her mother in the assignment of the land warrant, had any intimation that the warrant had been issued or that the same had been sold until some time in the latter part of the year 1889, and that they did not become possessed of all of the facts stated in the bill until the month of August, 1891. It is further said in their behalf, that they were persons occupying a humble station in life, and that they were, to a certain extent, illiterate and inexperienced. It is not claimed, however, that any fraud was practiced upon the plaintiffs, or that knowledge of the issuance and sale of the land warrant was intentionally concealed from them

with a view of preventing them from asserting their rights, either before or after they attained their majority. The case rests, therefore, so far as any excuse for the delay in bringing suit is concerned, solely upon the plea of long-continued ignorance, unaffected by any other extenuating circumstances. Is this excuse sufficient to give them a standing in a court of equity upon the state of facts disclosed by this record? Proceeding to consider this question, we may be permitted to intimate a serious doubt whether all or any of the minor heirs of George W. Remsen, who are represented in this action, were, in fact, ignorant of the issuance, sale and assignment of the land warrant by their mother and older sister when the sale was made. At that time, Mary Ann Remsen, the mother of two of the plaintiffs, was about fourteen years of age; John Wesley Remsen, one of the present plaintiffs, was a boy at least eleven years old; they were then living with their mother, and the family appears to have been possessed of limited means and to have been in straitened circumstances. Under these conditions, it is possible, of course, that the sale of the warrant and receipt of the purchase-money was only known to the mother and oldest daughter, but it is by no means probable that such was the fact. It is more reasonable, we think, to believe that a transaction of such importance to people in their then condition was frequently discussed or mentioned in the family circle, and that it was well known to all of the children who were then capable of understanding facts or events of that nature. At this late day it is easy for those of the children who are still living to say, with much apparent sincerity, that they had no knowledge of the issuance and sale of the warrant, while it is practically impossible for the defendants to disprove such assertions. For these reasons, we think that the testimony tending to show ignorance of the transaction in question, as an excuse for the long years of delay, should be received and acted upon by a chancellor with great caution, even if it is not entirely discredited. There are some facts, however, of which the plaintiffs do not pretend to have been ignorant. It is admitted, or, if not admitted, it is apparent from the testimony, that all of the minor heirs well knew that their father was a soldier in the Mexican war; that he died in the service and that their mother was in receipt of a pension on account of
402 such service; they were all affected, at least when they attained their majority, with knowledge of the law which granted to them and to their mother one hundred and sixty acres of land and entitled them to receive a warrant therefor from the Government. This latter fact is one, we think, of which the plaintiffs cannot be permitted to plead ignorance; it is also a fact which should have inspired some affirmative action on their part, with a view of ascertaining their rights, within a reasonable period after they respectively became of full age and were entitled to receive their inheritance. Assuming that they were each utterly ignorant until they became of full age of the previous issuance and sale of the land warrant, yet a simple inquiry addressed to the Land Department could not have failed to have made them acquainted, more than thirty years ago, with all of the facts attending the

issuance and sale of the warrant, which they have since learned. At that time, say from 1856 to 1863, during which period the several minors became of age, the land in controversy, which is now worth nearly, if not quite, a million dollars, was then worth not to exceed fifteen hundred dollars, and but few conveyances affecting the same had been made. These are facts which a court of equity cannot overlook in determining whether the plaintiffs have exercised such reasonable diligence as they were required to exercise. It must be presumed that they were acquainted with the law which, on a state of facts that was well known to them, entitled them to receive a certain gratuity from the Government on account of their father's enlistment and services; they must also be presumed to have known whatever would have been discovered, had they made such use of the knowledge which they are presumed to have possessed, as other persons of fair intelligence would have made of it. Stating the proposition in a different form, it may be said that they cannot plead ignorance of the rights now asserted, as an excuse for long years of delay, when it is evident that such ignorance was due to their own neglect in failing to take any steps to secure a land warrant which they knew they were entitled to if it had not already been issued. While it is true that ignorance of one's rights will frequently serve as an excuse in a court of equity for not bringing a suit to enforce them, yet it will never have that effect where such ignorance is fairly attributable to negligence, or to a party's failure to make such inquiries with respect to his rights as, with the information at his command, he ought to have made.

It has been suggested by counsel, that it is a harsh rule which imposes on the plaintiffs the duty of knowing the law and of thereby knowing, many years ago, that they were entitled to a land warrant; it is also suggested that the old maxim, "Ignorance of the law excuses no one," is not applicable to the present case. In almost the same breath, however, it is confidently asserted that all of the numerous persons who, for the past thirty or forty years have bought portions of the land now in controversy, some of whom were doubtless as ignorant and inexperienced as these plaintiffs, are each and all of them affected with knowledge of the invalidity of their respective titles, because the records do not affirmatively show
403 that the sale of the land warrant under which they derived title, was made pursuant to an order of the orphans' court, as the act of Congress required. We confess our inability to perceive that the rule in question is any less harsh or oppressive in the latter case than in the former. If it can be invoked by the plaintiffs to affect the defendants with notice of the flaw in their title, then, with equal justice, it can be invoked by the defendants for the purpose of showing that the plaintiffs were many years ago affected with such knowledge of the law and facts as should have put them upon inquiry. For the foregoing reasons, we have felt constrained to hold that the plaintiffs failed to show such diligence in ascertaining their alleged rights as entitled them to relief in a court of chancery. It is as much the duty of a suitor in equity to be diligent in discovering his rights as it is to be prompt in asserting them after

they become known. In the present case, nothing appears to have been done by the minors, for more than thirty years after they became of full age, with a view of finding out whether a land warrant had ever been issued by the Government, although they are presumed to have had knowledge during all of that period that they were justly entitled to one. Such conduct on their part either amounts to gross laches or it creates a strong presumption that they were fully aware of the issuance and sale of the land warrant in question, and for the purposes of this case it matters not which of these views ought to be adopted.

There is another potent reason why the decree dismissing the bill of complaint ought not to be disturbed. It has already been stated that in applying the doctrine of laches, courts of equity are not influenced solely by lapse of time, but by other considerations as well, which render it obviously inequitable to grant the relief prayed for. They have a limited discretion in determining under what circumstances they will afford redress, and the hand of the chancellor will always be stayed when to act would be to do an injustice. *Galliher v. Cadwell* (*supra*); *Felix v. Patrick* (*supra*); *McKinney v. Bode*, 33 Minnesota, 450; *Murphy v. Burke*, 47 Minnesota, 99. In the present case there has not only been long, and as we think, inexcusable delay, but it would be grossly unjust to grant the relief which these plaintiffs seek to obtain. More than forty years ago the widow of George W. Remsen sold the land warrant in question for its full value, and doubtless used the proceeds for the support and maintenance of her minor children; if she sold it without having obtained the requisite authority from the orphans' court, her action was due solely to a mistake of law; the testimony does not raise the slightest suspicion of fraud or attempted concealment either on her part or on the part of the purchaser. Through the foresight of the purchaser of the warrant it was located in the vicinity of two frontier villages, which have since become large cities, and the land has become of immense value; hundreds of people who were at least as innocent as these plaintiffs, have since expended their means in purchasing portions of the property and in improving it in divers and sundry ways. The plaintiffs live a thousand miles dis-
404 tant from the premises; it was not through any foresight of theirs that the fortunate selection of the land was made, and they have never contributed a dollar towards its improvement. It only requires a glance at these facts and at this situation to warrant us in saying that no greater wrong could be perpetrated under the guise of administering justice than by granting the relief prayed for in the present suit.

The decree of the circuit court dismissing the bill is therefore *affirmed.*

Filed December 10, 1894.

405 And on the tenth day of December, A. D. 1894, in the record of the proceedings of said circuit court of appeals is a decree in said cause in words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1894.

MONDAY, *December* 10, 1894.

ELIZABETH WETZEL, HARRIET A. VAN ZANT, EMMA F. Hergesheimer, Maggie L. Beckman, John Wesley Remsen, Mary J. Remsen, George W. Remsen, Clara B. Remsen, and Mabel Remsen, Appellants,
vs.
THE MINNESOTA RAILWAY TRANSFER COMPANY *et al.*, Appellees.
No. 496.

Appeal from the circuit court of the United States for the district of Minnesota.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Minnesota and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed with costs, and that the appellees recover against Elizabeth Wetzel, Harriet A. Van Zant, Emma F. Hergesheimer, Maggie L. Beckman, John Wesley Remsen, Mary J. Remsen, George W. Remsen, Clara B. Remsen, and Mabel Remsen, appellants, the sum of twenty dollars for their costs herein and have execution therefor.

December 10, 1894.

And on the eighteenth day of November, A. D. 1895, there was filed in the clerk's office of said circuit court of appeals a petition for and order allowing appeal in the words and figures following, to wit:

406 United States Circuit Court of Appeals for the Eighth Circuit.

ELIZABETH WETZEL, HARRIET A. VAN ZANT, EMMA F. HERGESHEIMER, Margaret L. Beckman, John Wesley Remsen, George W. Remsen, Mary J. Remsen, Clara B. Remsen, and Mabel Remsen, Complainants and Appellants,
vs.
THE MINNESOTA TRANSFER RAILWAY COMPANY *et als.*, Defendants and Respondents.

The above-named complainants, Elizabeth Wetzel, Harriet A. Van Zant, Emma F. Hergesheimer, Margaret L. Beckman, John Wesley Remsen, George W. Remsen, Mary J. Remsen, Clara E. Remsen, and Mabel Remsen, conceiving themselves aggrieved by the decree of affirmance entered on December 10, 1894, in the above-entitled proceeding, do hereby appeal from said decree to the Supreme Court of the United States, and they pray that this their appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly

authenticated, may be sent to the Supreme Court of the United States.

St. Paul, November 16th, 1895.

WM. C. MAYNE,
926 *Walnut St., Philadelphia, Pennsylvania;*
WM. ELY BRAMHALL,
515 *New York Life Bldg., St. Paul, Minnesota;*
CHAS. W. BUNN,
Northern Pacific Bldg., St. Paul, Minnesota,
Solicitors for Complainants and Appellants.
CHARLES W. BUNN,
Northern Pacific Bldg., St. Paul, Minn., of Counsel.

And now, to wit, on November 16th, A. D. 1895, it is ordered that the appeal be allowed as prayed for herein.

WALTER H. SANBORN,
Judge of the United States Circuit Court of Appeals for the Eighth Circuit.

407 Endorsed: "No. 496, original. United States circuit court of appeals for the eighth circuit. Elizabeth Wetzel *et als. vs.* The Minnesota Transfer Railway Company *et als.* Petition for appeal and order allowing same. Filed Nov. 18, 1895. John D. Jordan, clerk. Due personal service of within by copy admitted on us this 16th day of November, A. D. 1895. Davis, Kellogg & Severance, attorneys for resp'd'ts."

And on the eighteenth day of November, A. D. 1895, there was filed in the clerk's office of said circuit court of appeals a bond on appeal in the words and figures following, to wit:

United States Circuit Court of Appeals for the Eighth Circuit.

ELIZABETH WETZEL, HARRIET A. VAN ZANT, EMMA F. HERGESHEIMER, Margaret L. Beckman, John Wesley Remsen, George W. Remsen, Mary J. Remsen, Clara B. Remsen, and Mabel Remsen, Complainants and Appellants,
vs.
THE MINNESOTA TRANSFER RAILWAY COMPANY *et als.*, Defendants and Respondents.

Whereas lately, at the December, 1894, term of the United States circuit court of appeals for the eighth circuit, in a suit pending in said court upon appeal from the circuit court in and for the district of Minnesota, third division, between said complainants, as complainants and appellants, and said defendants, as defendants and respondents, a decree was rendered and entered on December 10, 1894, against said complainants and appellants, in and by which it was ordered, adjudged, and decreed that the decree of said circuit court that said complainants take nothing by this action be affirmed, and said complainants and appellants having obtained an allowance of the said court of appeals of an appeal to reverse the decree

in the aforesaid suit, and a citation directed to said defendants and each of them, citing and admonishing them and each of them
408 to appear in the Supreme Court of the United States, at the city of Washington, D. C., thirty days from and after the date of said citation:

Now, therefore, the American Surety Company of New York, for itself, its successors and assigns, does undertake, promise, and agree to and with said defendants, their successors and assigns and their heirs, executors, and administrators, that said complainants shall pay all damages and costs that may be awarded against them on said appeal, not exceeding the sum of five hundred dollars. Now, the condition of the above obligation is such that if said complainants and appellants shall prosecute said appeal to effect and answer all damages and costs if they shall fail to make said appeal good, then this obligation shall be void; otherwise the same should be and remain in full force and effect.

In witness whereof the American Surety Company of New York has caused these presents to be signed by its resident vice-president and resident assistant secretary at St. Paul, Minnesota, and its corporate seal to be hereunto affixed on the 15th day of November, A. D. 1895.

THE AMERICAN SURETY COMPANY
OF NEW YORK,
By DANIEL D. MERRILL,
[SEAL.] *Resident Vice-President, and*
GEORGE B. EDGERTON,
Resident Assistant Secretary.

In the presence of—
GEORGE W. HUNT.
F. H. SLOCUM.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

On this 15th day of November, A. D. 1895, before me personally appeared Daniel D. Merrill and George B. Edgerton, to me personally known, who, being by me duly sworn, did each upon his oath for himself say that he, said Daniel D. Merrill, is the resident vice-president of the American Surety Company of New York, and that he, said George B. Edgerton, is the resident assistant secretary of said American Surety Company of New York, a corporation; that
409 the seal annexed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and the said Daniel D. Merrill and George B. Edgerton acknowledged said instrument to be the free act and deed of said corporation.

T. H. PRIDHAM,
[SEAL.] *Notary Public, Ramsey County, Minnesota.*

It is hereby stipulated that the foregoing undertaking may be allowed and approved in the above-entitled cause upon the appeal

thereof to the Supreme Court of the United States as and in the place of a bond and with the same force and effect as if the bond provided for in the rules of the Supreme Court of the United States had been given in this action upon such appeal.

Dated November 16th, A. D. 1895.

DAVIS, KELLOGG & SEVERANCE,
Attorneys for said Defendants and Respondents.

The foregoing undertaking, with the surety thereon, is hereby approved and allowed.

Dated November 16th, A. D. 1895.

WALTER H. SANBORN,
Judge of the United States Circuit Court of Appeals for the Eighth Circuit.

Endorsed: "No. 496, original. United States circuit court of appeals for the eighth circuit. Elizabeth Wetzel *et als. vs.* The Minnesota Transfer Railway Company *et als.* Appeal bond. Filed Nov. 18, 1895. John D. Jordan, clerk. Due personal service of within by copy admitted on us this 16th day of November, A. D. 1895. Davis, Kellogg & Severance, attorneys for resp'd'ts."

410 And on the eighteenth day of November, A. D. 1895, there was filed in the clerk's office of said circuit court of appeals an assignment of errors in said cause in the words and figures following, to wit:

United States Circuit Court of Appeals for the Eighth Circuit.

ELIZABETH WETZEL, HARRIET A. VAN ZANT, EMMA F. HERGESHEIMER, Margaret L. Beckman, John Wesley Remsen, George W. Remsen, Mary J. Remsen, Clara B. Remsen, and Mabel Remsen, Complainants and Appellants,
vs.
THE MINNESOTA TRANSFER RAILWAY COMPANY *et als.*, Defendants and Respondents.

Assignment of Errors.

And now comes the said complainants and appellants above named, by their attorneys herein, and say that in the record and proceedings in this case there are manifest errors, and they assign the following errors, to wit:

1st. The said court erred in not ruling and adjudging and decreeing that the sale of the land warrant by the widow and heirs of George W. Remsen was absolutely null and void, as alleged in the bill of complaint.

2nd. The said court erred in not adjudging and decreeing that the sale of said land warrant was at least absolutely null and void as — the children of said George W. Remsen who were minors at the date of sale.

3rd. The court erred in not adjudging and decreeing that the sale

and assignment of said land warrant was at least absolutely null and void as to the minor children of said George W. Remsen, for and on behalf of whom his widow executed the said assignment.

4th. The court erred in not adjudging and decreeing that said minor children referred to in the last assignment were under no obligation to disaffirm said sale and assignment after becoming of age.

5th. The court erred in not adjudging and decreeing that
411 the sale and assignment of said land warrant was a conveyance of real estate.

6th. The court erred in not adjudging and decreeing that the vendee of said land warrant as well as purchasers under him, including the defendants in this case, were trustees of the legal title to said lands or some part of them or interest therein and bound in equity to convey to the plaintiffs or part of them as prayed and alleged in the bill of complaint.

7th. The court erred in not adjudging and decreeing that the plaintiffs or some of them were the equitable owners of the real estate described in the bill or some part thereof or interest therein.

8th. The court erred in not adjudging and decreeing that the defendants in this case were purchasers with full notice of all the equities of the complainants and each of them.

9th. The court erred in adjudging and decreeing that the complainants or any of them were guilty of such delay or laches as to bar their right to recover the premises described in the bill in this suit.

10th. The court erred in adjudging and decreeing that the bill of complaint in this suit be dismissed.

12th. The court erred in adjudging and decreeing that the decree entered herein in the circuit court of the United States in and for the district of Minnesota, third division, be affirmed.

Wherefore the said complainants pray that the decree of the circuit court of the United States in and for the district of Minnesota, third division, be reversed, and that said circuit court be ordered to enter a decree herein in favor of the complainants, as prayed for in their bill of complaint herein.

Dated November 16th, A. D. 1895.

WM. C. MAYNE,
WM. ELY BRAMHALL,
Plaintiffs' Solicitors.

C. W. BUNN, *Of Counsel.*

412 Due personal service of within by copy admitted on us this 16th day of November, A. D. 1995.

DAVIS, KELLOGG & SEVERANCE,
Attorneys for Resp'd'ts.

Endorsed: "No. 496, original. United States circuit court of appeals for the eighth circuit. Elizabeth Wetzel *et als. vs.* The Minnesota Transfer Railway Company *et als.* Assignment of errors. Filed Nov. 18, 1895. John D. Jordan, clerk."

And on the eighteenth day of November, A. D. 1895, a citation was filed in the clerk's office of said circuit court of appeals in said cause, the original of which, with admission of service endorsed thereon, is hereto attached and herewith returned.

413 United States Circuit Court of Appeals for the Eighth Circuit.

ELIZABETH WETZEL, HARRIET A. VAN ZANT, EMMA F. HERGESHEIMER, Margaret L. Beckman, John Wesley Remsen, George W. Remsen, Mary J. Remsen, Clara B. Remsen, and Mabel Remsen, Complainants and Appellants,

vs.

THE MINNESOTA TRANSFER RAILWAY COMPANY *et als.*, Defendants and Respondents.

UNITED STATES OF AMERICA, *ss:*

To the Minnesota Transfer Railway Company and all of the other defendants in the above-entitled suit, Greeting:

You and each of you are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the city of Washington, D. C., thirty days from and after the date of this citation, pursuant to an appeal filed in the clerk's office of the United States circuit court of appeals for the eighth circuit, wherein the above-named complainants, Elizabeth Wetzel, Harriet A. Van Zant, Emma F. Hergesheimer, Margaret L. Beckman, John Wesley Remsen, George W. Remsen, Mary J. Remsen, Clara B. Remsen, and Mabel Remsen, are appellants and The Minnesota Transfer Railway Company and the other defendants in the above-entitled suit are respondents, to show cause, if any there be, why the decree in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 16th day of November, in the year of our
414 Lord one thousand eight hundred and ninety-five.

WALTER H. SANBORN,
Judge of the United States Circuit Court of Appeals for the Eighth Circuit.

[Endorsed:] No. 496, original. United States circuit court of appeals for the eighth circuit. Elizabeth Wetzel *et als. vs.* The Minnesota Transfer Railway Company *et als.* Citation on appeal. Filed Nov. 18, 1895. John D. Jordan, clerk. Bramhall & Taylor, attorneys and counselors, 52 Gilfillan building, St. Paul, Minn.

Due personal service of within by copy admitted on us this 16 day of November, A. D. 1895.

DAVIS, KELLOGG & SEVERANCE,
Attorneys for Resp'd'ts.

415 And on the twenty-first day of November, A. D. 1895, there was filed in the clerk's office of said circuit court of appeals a

stipulation as to original exhibits on appeal to the supreme court in said cause in words and figures following, to wit:

United States Circuit Court of Appeals for the Eighth Circuit.

ELIZABETH WETZEL *et als.*, Appellants,
vs.
THE MINNESOTA TRANSFER RAILWAY COMPANY *et als.*, Respondents.

Stipulation.

It is hereby stipulated and agreed by and between the parties to the above-entitled cause that the clerk of the above-entitled circuit court of appeals need not send to the United States Supreme Court a copy of any of the exhibits nor any part thereof introduced in evidence herein by either the complainants or defendants as a part of the record herein upon the appeal of the complainants herein from the decree of this court entered herein upon December 10, 1894, to the United States Supreme Court, but in place and in lieu of such copies the clerk shall certify and send to said Supreme Court, for use on such appeal, said original exhibits and all thereof for use upon the hearing of said appeal, with the same force and effect as if the copies thereof had been duly authenticated, certified, and returned to said Supreme Court by the clerk of this court as a part of the record of such appeal.

Dated November 18th, A. D. 1895.

WM. ELY BRAMHALL,
WM. C. MAYNE,
C. W. BUNN, *Solicitors for Complainants.*
DAVIS, KELLOGG & SEVERANCE,
Solicitors for Defendants.

Endorsed: "No. 496. Elizabeth Wetzel *et al.*, appellants, *vs.* Minnesota Transfer Railway Company *et al.* Stipulation as to
416 original exhibits. Filed Nov. 21, 1895. John D. Jordan, clerk."

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals, eighth circuit, do hereby certify that the foregoing 416 pages contain full, true, and complete copies of all the pleadings, proceedings, and record entries, including the opinion of said circuit court of appeals, in the case of Elizabeth Wetzel *et al.*, appellants, *vs.* The Minnesota Railway Transfer Company *et al.*, appellee-, No. 496, December term, 1894, as the same remain upon the files and records of said United States circuit court of appeals.

I do further certify that on the eleventh day of February, A. D. 1895, there was issued out of the clerk's office of said circuit court of appeals a mandate, directed to the circuit court of the United

States for the district of Minnesota, in pursuance of the decree of said United States circuit court of appeals.

I further certify that the original citation in said cause, with the admission of service endorsed thereon, is hereto attached and herewith returned.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of St. Louis, Missouri, this fifth day of December, A. D. 1895.

Seal United States Circuit Court of Appeals, Eighth Circuit.

JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

Endorsed on cover: Case No. 16,123. U. S. circuit court of appeals, eighth circuit. Term No., 94. Elizabeth Wetzel *et al.*, appellants, *vs.* The Minnesota Railway Transfer Company *et al.* Filed January 2, 1896.

No. 94.

JAN 17 1898
JAMES H. McKENNEY
CLERK

Brief of Mayne for Appellants

In the Supreme Court of the United States,

OCTOBER TERM, 1897.

Filed Jan. 17, 1898.

NO. 94.

ELIZABETH WETZEL ET AL., APPELLANTS,

VS.

THE MINNESOTA RAILWAY TRANSFER COMPANY ET AL.

Appeal from the United States Circuit Court of Appeals for the Eighth Circuit.

Brief of Appellants.

WILLIAM C. MAYNE,
of Counsel for Appellants.

EDWARDS & BROUGHTON, PRINTERS AND BINDERS, RALEIGH

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IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 94.

ELIZABETH WETZEL ET AL., APPELLANTS,

vs.

THE MINNESOTA RAILWAY TRANSFER CO. ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR APPELLANTS.

I.

STATEMENT OF THE CASE.

The appellants, as plaintiffs, filed their bill in the Circuit Court, District of Minnesota, Third Division, on the 28th day of May, A. D. 1892, against the appellees, the defendants named therein, setting forth *inter alia*: That one George W. Remsen became in his lifetime duly entitled to a land warrant for enlistment and services in the United States Army, under the terms of the Act of Congress, approved on the 11th day of February, A. D. 1847, and being so entitled to said land warrant died; and that after his death, and on the 30th day of February, A. D. 1848, the Government duly issued its land warrant, No. 28811, for one hundred and sixty acres of land, in the name of Elizabeth Remsen, widow, Harriet A. Remsen, Mary Ann Remsen, John Wesley Remsen, Elizabeth Remsen and George W. A. Remsen, children and heirs-at-law of said George W. Remsen, deceased; and that at the time of the issuance of said land warrant and its transferance all of said chil-

dren were minors, under the age of fourteen years, except Harriet A. Remsen, who was seventeen years of age. And that on the 6th day of October, 1848, the said Elizabeth Remsen, widow, was duly appointed the guardian of the persons and estates of all of said minors, except the said Harriet A. Remsen, by the Orphans' Court of Philadelphia, Pennsylvania, which had jurisdiction to appoint said guardian.

And that on the 11th day of October, 1848, at Philadelphia, the said Elizabeth Remsen, for herself and as the guardian aforesaid, joined with said Harriet A. Remsen, and together attempted to assign said land warrant by a written instrument (a copy of which is set forth on page 15 of the record) to one Nathan C. D. Taylor.

And that said Taylor, as the assignee as aforesaid, located said land warrant on the property, the subject-matter of the suit, on or about the 20th day of March, 1850; and thereafter the Government issued its patent therefor, dated the 20th of March, 1850, to said Taylor, as the assignee of said Elizabeth Remsen, in her own right and as guardian of said minor heirs of said George W. Remsen, deceased. (A copy of said patent is set forth on page 16 of the record.)

And that thereafter said Taylor recorded said patent in the county, the situs of the land, and executed divers and sundry conveyances of said lands, or of different parts thereof, by which he conveyed all his right, title and interest therein to sundry and divers persons, so that by said conveyances or a chain of conveyances, originating as aforesaid, have passed to and now owned by the defendants, who now claim to be the sole and absolute owners thereof, by a chain of titles originating with said Taylor after the record of said patent, except those of the defendants, who claim to have judgments on liens on said premises, which are subject and subordinate to the titles of the plaintiffs, who allege that said sale and assignment of said land warrant was wholly void and of no effect, because the said Orphans' Court never made any order or decree, or took any other proceedings authorizing the said guardian to sell, transfer or assign the interest of said minors in said land warrant; and without such order or decree of said Orphans' Court, the said guardian had no authority to sell, transfer or

assign the interests of said minor children; and that Elizabeth Remsen, the widow and guardian, was entitled only to a dower interest therein in said land, which could not be sold or assigned before admeasurement; and the said Harriet A. Remsen was at this time a minor of only seventeen years of age, and was intermarried with one Jacob A. Heyer, and her conveyance was void without the signature of her husband; and that none of the plaintiffs, or their predecessors in interest (except said Elizabeth Remsen, the said widow and guardian, who afterwards intermarried with one Wetzel) at the time of the alleged assignment of said land warrant, knew of said sale, and that they remained in absolute ignorance thereof, or that that or any other land warrant in which they were in interest had ever been issued to them, or their father, or their guardian, or that their father ever became entitled to any such land warrant until August in the year 1891, when they first had any knowledge or information whatever of the facts set forth in this bill, when they acquired their information in the following manner:

"Letters had been before received by them from parties in the city of St. Paul, State of Minnesota, representing the defendants, or some of them, requesting the plaintiffs, or some them, to execute quit-claim deeds of certain interests which they were supposed to have, or to have had in lands in the State of Minnesota. The deeds so requested being for all their interests in lands anywhere within said State, and the said parties declining to describe the particular, land intended to be conveyed." And that when said letters were received the plaintiffs, except their said guardian, were totally ignorant of ever having had any interest in any lands in the State of Minnesota, and on receipt of said letters they consulted counsel, who caused an investigation to be made of the records of the Land Department of the United States at Washington; and in the course of such investigation the plaintiffs ascertained, in the month of August, 1891, substantially the facts alleged in the bill; and thereafter employed counsel both in Philadelphia and St. Paul to investigate the title to the lands in dispute, and give opinions thereupon; and said investigation and the preparation of information on which to base this

suit was diligently prosecuted, and suit commenced, as soon as was possible under the circumstances of this case, could be done.

The bill alleges that defendants acquired their title and rights in the land in dispute with full notice and knowledge of all the recitals in said patent, and all the terms thereof; and that the defendants, and all persons claiming by, through or under said patent, are trustees of the said lands for the benefit of the plaintiffs, the value of which said lands exceeds twenty-five thousand dollars.

The bill prays for an accounting and a decree of conveyance, and other relief.

The answer denies that Elizabeth Remsen was only entitled to a dower right under said land warrant, or that the assignment was void, or that the Orphans' Court ever made any decree authorizing the sale and assignment of the same, or that the plaintiffs and their predecessors in interest were ignorant of the said assignment, or ignorant that a land warrant had ever been issued, or ignorant that George W. Remsen was ever entitled to the same.

And the answer alleges that the land warrant in question was issued, as set forth by plaintiffs in their bill, but aver that the same was personal property, and salable and assignable as personal property, and was not of the value of over one hundred dollars.

The answer admits the appointment of Elizabeth Remsen, as set forth in the bill, as the guardian of the minor heirs of Geo. W. Remsen, deceased, by the Philadelphia Court, as the proper Orphans' Court having jurisdiction of the subject matter and parties; and thereafter, as set forth in the bill, made the assignment thereof to Taylor; and that in doing this the guardian had full authority, as it was unnecessary to procure a decree therefor, or any order authorizing the sale of the land warrant; and that the Orphans' Court, by appointing her guardian, duly authorized her to sell, assign and transfer said land warrant, which she subsequently did in good faith, and for a consideration equal to the full value of such land warrant, paid by said Taylor to said widow and children of George W. Remsen, deceased, and thereupon said Taylor became the owner thereof by purchase, as aforesaid.

The answer alleges that the plaintiffs, as the widow and minor heirs of said George W. Remsen, deceased, have at all times known he was a soldier in the Mexican War, and entitled to a land warrant, and knew of its issuance to them by the Government, and from then until its assignment had actual possession of it.

The answer alleges that the defendants have no knowledge or information as to the manner and form in which plaintiffs became acquainted with their pretended rights, as stated in the bill, and hence deny the same.

The answer further alleges that Taylor, after the assignment to him of said land warrant under the written instrument. set forth in the bill, located the same upon the lands in dispute, and thereafter obtained the patent, as set forth in the bill, and recorded it in the county, the situs of the lands in dispute, and thereafter made divers conveyances thereof to the defendants, who purchased the same or advanced money thereon, or became entitled to a lien thereon, in good faith, without any knowledge or notice of any claim thereto by the widow and minor heirs of George W. Remsen, deceased.

The answer admits and alleges that, by various and sundry *mesne* conveyances, the land in dispute is now held and owned by the various persons set forth in the bill, but avers that at the time Taylor entered thereon it was not worth over one dollar and twenty-five cents per acre; and is now worth upwards of over $1,000,000, over and above improvements, and is owned by several hundreds of innocent purchasers, and has been absorbed by and become part of the city of St. Paul, and has for many years lain within its corporate limits, and has been platted into additions and subdivided into blocks and lots, is covered with many houses, and occupied by many actual residents, with improvements in excess of two millions of dollars thereon. And that the defendants and their grantors have been in possession of said land under their titles, and notoriously have exercised actual ownership over the same, and have paid the taxes and assessments thereon for nearly forty years last passed, to the amount of many thousand dollars, all with the knowledge of plaintiffs, and who made no claim or demand whatsoever of any right to said property at any time before filing their complaint.

The answer further alleges that the defendants and their grantors have been in open, notorious and continuous advance possession of said land for more than twenty years before the commencement of this action, and that plaintiffs and their predecessors or grantors were not seized or possessed of said land within fifteen years before the commencement of this action.

And that if defendants hold said land in trust for plaintiffs, as alleges in the bill, more than six years have elapsed since said cause of action accrued, and before the commencement of same, and is barred by the statutes of the State of Minnesota, being the seventh subdivision of section 6 of Title II, chapter 66, of the Statutes of Minnesota. And that plaintiffs and their predecessors had discovered and well knew all the facts set out in the bill more than six years prior to the commencement of this action; and those who were infants when the assignment and patent were made to Taylor, as well as their grandchildren, discovered and well knew all of said facts set out in the bill upon obtaining their majority, and many years more than six years before the commencement of this action. And that plaintiffs with such knowledge, acquiesced in the title of the defendants, and thereby became guilty of such laches as to bar recovery; and that plaintiffs ratified and confirmed the title of defendants; and therefore defendants pray to be discharged, and they have judgment for costs and disbursements.

The plaintiffs, to the answer of defendants, filed a general replication (see record, page 33), and thereupon proofs were had before an examiner, and upon argument upon bill, answer and proofs, the Circuit Court did enter a decree dismissing plaintiffs' bill. (See record, pages 217—220.)

And thereupon the plaintiffs did appeal to the United States Circuit Court of Appeals, of the Eighth Circuit; and by decree, dated December 10, 1894, the said Court did affirm the decree of said United States Circuit Court. (See record, page 232.)

And thereupon appellants did, on the 16th day of November, A. D. 1895, present their petition for an allowance of appeal from said decree of affirmance to this Honorable Court, which was duly allowed by said United States Circuit Court of Appeals. (See record, pages 232—233.)

And appellants did thereupon, on the 18th day of December, A. D. 1895, assign and file of record (see page 235) in said Circuit Court of Appeals the following:

II.

ASSIGNMENT OF ERRORS.

1. The said Court erred in not ruling and adjudging and decreeing that the sale of the land warrant by the widow and heirs of George W. Remsen was absolutely null and void, as alleged in the bill of complaint.

2. The said Court erred in not adjudging and decreeing that the sale of said land warrant was at least absolutely null and void as to the children of said George W. Remsen, who were minors at the date of sale.

3. The Court erred in not adjudging and decreeing that the sale and assignment of said land warrant was at least absolutely null and void as to the minor children of said George W. Remsen, for and on behalf of whom his widow executed the said assignment.

4. The Court erred in not adjudging and decreeing that said minor children, referred to in the last assignment, were under no obligation to disaffirm said sale and assignment after becoming of age.

5. The Court erred in not adjudging and decreeing that the sale and assignment of said land warrant was a conveyance of real estate.

6. The Court erred in not adjudging and decreeing that the vendee of said land warrant, as well as the purchasers under him, including the defendants in this case, were trustees of the legal title to said lands, or some part of them, or interest therein, and bound in equity to convey to the plaintiffs, or part of them, as prayed and alleged in the bill of complaint.

7. The Court erred in not adjudging and decreeing that the plaintiffs, or some of them, were the equitable owners of the real estate described in the bill, or some part thereof or interest therein.

8. The Court erred in not adjudging and decreeing that the defendants in this case were purchasers, with full notice of all the equities of the complainants, and each of them.

9. The Court erred in adjudging and decreeing that the complainants, or any part of them, were guilty of such delay or laches as to bar their rights to recover the premises described in the bill in this suit.

10. The Court erred in adjudging and decreeing that the bill of complaint in this suit be dismissed.

11. The Court erred in adjudging and decreeing that the decree entered herein, in the Circuit Court of the United States, in and for the District of Minnesota, Third Division, be affirmed.

III.

BRIEF OF ARGUMENT.

The first, second and third assignments of error resolve themselves into this proposition: That, assuming the interest of the widow of the deceased soldier in a Mexican bounty land warrant is more than a dower right, and obtains to a seizin in fee as a joint tenant to and with the minor children as heirs-at-law of said deceased soldier, yet no sale of assignment thereof can be legally made by said widow as the guardian of said minors, except so far as her own individual interest (whatever that may be) therein is concerned, but in pursuance of the 9th section of the Act of Congress (9 U. S. at Large, 125), approved the 11th day of February, A. D. 1847.

The defendants, however, controvert this proposition, and allege in their answer that, "at the time of the sale, transfer and assignment (of the land warrant in question) it was not necessary to procure from the Orphans' Court (appointing the guardian in question) any order or decree authorizing the sale of said land warrant: Nevertheless, the said Orphans' Court of the city and county of Philadelphia, did, by the appointment of the said Elizabeth Remsen (the guardian in question) aforesaid, duly authorize her to sell, assign and transfer said land warrant."

This plea, in confession and avoidance of the defendants, must fall when the provisions of the Act of Congress referred to are examined. This act contemplated more than the appointment of the guardian to carry with it the effect ascribed to it by defendants, for this act expressly provides that the legally

constituted guardian shall have power to sell and dispose of the interests of the minors therein, "upon being duly authorized, . . . and then only for the benefit of those interested."

The learned Courts below have never controverted this proposition, and it is respectfully submitted that these assignments of errors ought to be sustained.

The fifth, sixth and seventh assignments of errors waive the sequent, logical conclusion: That if the interests of the minor heirs of the deceased soldier in the land warrant in question were never legally assigned, transferred or sold, and the assignee of whatever rights therein were vested in the widow, located the lands in dispute under this land warrant, and subsequently surrendered the same to the Government, and took in lieu thereof a patent from the Government for the land in dispute, then he became by his own act a tenant in common with the minor heirs, and a trustee for them as to their several interests therein in the land in dispute, located under their land warrant.

And the soundness of this proposition is not dependent upon the assumption that the land warrant in question is or is not realty. It follows, by analogy, that rule of equity which impresses a trust upon property, where the title is taken in one name, and the purchase-mony paid by another, in favor of the latter. When the assignee of the widow got possession of the land warrant in question, he got property, whether real or personal, in which the minor heirs were parties in interest as well as himself, and he became their trustee and tenant in common. When he traded or exchanged this property for the land in dispute the relation and interests did not change—only the subject matter of the property underwent a change.

When the widow of the deceased soldier got from the Government this bounty land warrant for herself and his minor heirs it was a certificate of warranty for one hundred and sixty acres of public land; and under the provisions of the said Act of Congress, approved the 11th day of February, A. D. 1847, it amounted to an absolute donation by the Government of not, indeed, any specific land, but any quarter section of any public land, subject to private entry in one body and in conformity to the legal subdivisions of the public land surveys.

This Court has uniformly so treated these character of land grants by the Government.

Rutherford v. Greene's heirs, 2 Wheat, 196.
Freemont v. United States, 17 How., 559.
United States v. Reading, 18 How., 6.
United States v. Larkin, 18 How., 557.

These grants vest a present title to one hundred and sixty acres of public land, subject to private entry, but a location thereunder, however, is necessary to give precision to them and attach them to any particular tract. The grant then becomes certain, and by relation has the same effect upon the selected parcels of land as if the grant itself had specifically described the land located or surveyed thereunder.

Leavenworth Railroad v. United States, 92 U. S., 741.
Hornsbey v. United States, 10 Wall, 225.
Schullenberg v. Harriman, 21 Wall., 44.
Hall v. Russell, 101 U. S., 509.
Railroad v. United States, 103 U. S., 429.
Van Wyck v. Knevals, 106 U. S., 360.
Wright v. Roseberry, 121 U. S., 488.
St. Paul and P. Railroad v. N. P. Railroad, 139 U. S., 1.
Desert Salt Co. v. Tarply, 142 U. S., 241.

The decisions of this Court upon the military, as well as other land grants of the Government, must govern all titles to public land before the issuance by the Government of a patent, and they uniformly give to such grants the dignity and effect of grants in præsenti, with all the incidents of vested rights in real estate. (Article III., Sec. 290, Equity Rules.)

Robinson v. Campbell, 3 Wheat, 222.
United States v. Howland, 4 Wheat, 108.
1 Curt. Com., Sec. 27—29.
Vattier v. Hinde, 7 Pet., 252.
Wilcot v. McConnel, 13 Pet., 498.
Irvine v. Marshall, 20 How., 558.
Leavenworth Railroad v. United States, 92 U. S., 471.

But whether the land warrant in question was realty or not, Taylor, the assignee of the widow, in pursuance of the interest

which he acquired by the assignment by the widow of her interest therein, and the interest of Harriet A. Remsen, one of the minor children of said deceased soldier, which it purported to convey (although the testimony shows that she was at this time of but the age of seventeen years and intermarried with one Jacob Heyer, who did not join therein) to him, also, located upon the land in question and surrendered the same to the Government, and upon its cancellation received a patent therefor from the Government, reciting the grant by the Government to said Taylor, "assignee of said Elizabeth Remsen, in her own right and as guardian of the aforesaid minors" (see record, page 16), prior to the issuance of this patent, the assignment of the land warrant, and entry thereunder upon the land in dispute, conveyed to Taylor only an equitable interest in the land in question. Upon the issuance of the patent, however, Taylor became vested with the legal title thereto; but this, of course, did not bar the prior equities of the minor children,—as to them he was sill their trustee and co-tenant.

Massie v. Watts, 6 Cranch, 148.
Irvine v. Marshall, 20 How., 558.
Brush v. Ware, 15 Pet., 108.
Stark v. Starss, 6 Wall, 402—419.
Meader v. Norton, 11 Wall, 442—458.
Widdicombe v. Childers, 124 U. S., 400, 405.
Felix v. Patrick, 145 U. S., 328.

It will not be seriously contended but that Taylor, the original assignee of the land warrant, was seized of the land in dispute under the patent obtained upon its cancellation in his own right, and as the trustee and tenant in common of the appellant's predecessors, the said minor heirs, and it is difficult to determine how he could transmit to the present defendants and their assignors in title a larger estate in the lands, the subject of this controversy, than he became seized of, unless the defendants can show that they or their assignors can tack on the estates of the minors by adversary possession.

But this is not attempted, and has been abandoned ever since the proofs conclusively showed that this land was not entered upon prior to the time Minnesota Transfer Railway Company,

one of the defendants, commendced to lay its tracks in the years 1881 and 1882 (see record, page 160), except a right-of-way to a railroad.

And clearly, if no period less than the statutory period of a State limitation will bar *cestui que trustent* of their remedy in equity, where suits are brought against their trustees or others claiming under them, with notice, on the principal that lapse of time is no bar to a subsisting trust in real estate or a cortenancy, and does not begin to run until knowledge of some overt act, or ouster, or refusal after demand to acknowledge the trust is brought home to them.

Oliver v. Piatt, 3 How., 333.
Clymer v. Dawkins, 3 How., 674.
Zellers v. Eckert, 4 How., 288.
Michod v. Giroud, 4 How., 502.
Taylor v. Benham, 5 How., 232.
Meader v. Norton, 11 Wall, 442.
Preston v. Preston, 95 U. S., 200.
Golden v. Kemmel, 99 U. S., 202.
Speidel v. Henrici, 120 U. S., 377.
Kirby v. L. S. & M. S. R. R., 120 U. S., 130.
Morrison v. Higgin, 136 U. S., 386.
Underwood v. Dungan, 139 U. S., 380.
Galliher v. Cadwell, 145 U. S., 368.

Ought not minor heirs of a deceased soldier of the Government—wards of the Chancellor—have at least as equitable provisions surround their property rights, which were donated to them by the Government in return for a father's life?

Clearly no duty devolved upon these minor heirs or their children and grandchildren, upon coming of age, to disaffirm the wrongful acts of their guardian, unless notice or knowledge thereof was brought home to them, for it is too clear to admit of any doubt that to create an estoppel against minors there must be some act or declaration or affirmance by them of their guardian's act, with full knowledge of all the facts; they are not bound by the negligence of their guardian.

Telegraph Company v. Davenport, 97 U. S., 373.

And for this reason the fourth assignment of error ought to be sustained.

If neither by acquiescence nor affirmance of appellants, nor the extension of defendant's estate by adversary possession, has the interest and title of appellants in the land in dispute been changed from its original condition, with Taylor as their trustee and tenant in common, it is difficult to conceive why the fifth, sixth and seventh assignments of error ought not to be sustained, as well as the eighth assignment of error; for if solemn recitals in the chain of defendant's pretended titles to the land in dispute did not affect them, with full notice of all the equities of the appellants here asserted, it is impossible to see how the wrongful acts of an executor, administrator, guardian, committee or trustee or other representative can ever be circumvented. This Court has uniformly held that wherever, upon the face of title papers, the purchaser has full means of acquiring complete knowledge of the title from the references therein made, he will be deemed to have notice thereof.

Brush v. Ware, 15 Pet., 111.
Oliver v. Piatt, 3 How., 333.
Cowell v. Spring Co., 100 U. S., 58.
Insurance Company v. Eldridge, 102 U. S., 547.
Sanford v. Sanford, 139 U. S., 642.

The remaining assignments of error involve the alleged errors of the Courts below in dismissing the plaintiff's bill, on the ground that the plaintiffs were guilty of such laches as to bar their recovery to the land in dispute.

In the opinion of the learned Judge of the Circuit Court of Appeals (27 United States App., 594), while admitting that plaintiffs' rights are not barred under any of the statutes of limitations of the State Court, the situs of land, yet applies the doctrine, in this case in bar of plaintiffs' rights, on the ground of the change in the condition of the property, the subject-matter of the suit, and the relations of the parties to the controversy.

This, it is respectfully submitted, in the absence of some direct proof of plaintiffs' negligence, is setting up an equitable estoppel, which the sovereign laws of the Government have

never enacted; and in the absence of such legislation it is not the province of the Court to so legislate.

The pertinent inquiry arises at this point: How have defendants been injured in the increase of the valuation of the property in question? If it has appreciated in value, the interest of the widow of the deceased soldier, the only interest of which they were ever seized, has the advantage of this betterment, in common with the interests of the (minor heirs, the appellants' predecessors in interest), their co-tenants.

This is the only change in the condition of the property since the defendants or their directors were seized thereof, and in this change they share beneficially therein with the appellants.

There has been no change in the relations of the parties to the controversy, except in the augmentation of their numbers; but this, like the change in the value of the property, is no disadvantage to the parties defendants, and were it, they took with full notice of the equities herein asserted of the appellants.

The equitable doctrine which the Court would impress is derivable from entirely different causes than these and is enforceable against those seeking to recover against innocent purchasers, without notice.

This Honorable Court has enforced this doctrine only in cases where the original transactions have become so obscured by lapse of time, loss of evidence and death of parties as to render it difficult, if not impossible, to do justice.

Brown v. County of Buena Vista, 95 U. S., 157, 160.

But the learned Court below says, in view of the lapse of time, the plaintiffs ought not only to aver, but offer proofs sufficient to justify the delay.

If complainants' averments in their bill were sufficient to carry them successfully over a demurrer, then surely the proofs sustain these allegations.

The averments that none of the complainants or their predecessors in interest, except the widow and guardian, at the time of the alleged assignment and sale of the land warrant, knew of said sale, and that they remained in absolute ignorance thereof, or that that or any other land warrant in which they were ever interested had ever been issued to them or their

father or guardian, or that their father ever became entitled to any such land warrant until in the month of August, 1891, is the uniform testimony of all of said complainants.

Neither the widow, nor Harriet A. Remsen, the elder child, who, at the time of the assignment, was only seventeen years of age, and intermarried with Jacob Heyer, could read or write. That neither signed their names to the assignment is shown by the expert testimony of Edwin B. Hay. (Page 147 of the record.) Hariet A. Remsen testified she was not present at the execution of the assignment, nor never knew of it, (Page 98).

How the complainants learned of the facts upon which this claim is predicated is averred in said bill that letters had been received by them from the parties in the city of St. Paul, Minnesota, representing defendants or some of them, requesting plaintiffs or some of them to execute quit-claim deeds of certain interests which they were supposed to have in lands in the State of Minnesota, the deeds so requested being for their interests in land within said State, and the parties writing, declining to describe the particular land intended to be conveyed. And that when said letters were received, the plaintiffs, except said guardian, were totally ignorant of ever having had any interest in land in the State of Minnesota; and on receipt of said letters they consulted counsel, who caused an investigation to be made of the records of the Land Department at Washington; and in the course of that investigation complainants obtained, in the month of August, 1891, the facts alleged in the bill as to the sale and assignment of the land warrant.

That the defendants, or some of them, had become restive of the uncertainty of their title under the patent issued in cancellation of this land warrant, and had determined to purchase the outstanding equities of the complainants, is shown by the search made to locate them by the St. Paul syndicate, of whom George L. Hendrickson, Esq., was one. (See record, pages 194—196.) While it is true Mr. Hendrickson says, in the month of December, 1889, he ascertained by questioning the former guardian, "that she knew of no land in the West, excepting the Mexican warrant of George W. Remsen," which she had sold and assigned, "and that he had to tell them that there

was some right in the heirs to bar a power of attorney," and he "simply said there was a defect in the title," but "didn't specify what"; but nothing was said about there being any defect in the assignment of the land warrant.

This testimony clearly shows that in December, 1889, Hendrickson came from St. Paul to Philadelphia to negotiate for a power of attorney, which was to be used to cure some undefined and untold defect in the title to land obtained under this warrant, and as the guardian who had attempted to assign and sell the interests of the minors therein, "did not talk very much to the point," it is clearly seen why William C. Mayne was met in Philadelphia at this time. The "stipulations as to certain facts" known to said Mayne at this time, appear on page 197 of the record, and for what purpose he was sought by this gentleman from St. Paul to procure a power of attorney from the complainants.

Thus, as the facts appear, by the defendant's own conduct, the ignorance of complainants was dissipated, all the technical presumptions attempted by defendants to be raised against them must disappear.

Lincoln v. French, 105 U. S., 614.
Fresh v. Gilson, 16 Pet., 327.
Prevost v. Gratz, 6 Wheat., 481.

But notwithstanding that the proofs submitted in this case fully sustains the averments in the bill justifying the delay in bringing this suit, against parties with full notice of record of the equities herein sought to be recovered: Notwithstanding that notice of their equities were brought to the knowledge of complainants by the defendants themselves or their representatives. And notwithstanding, as soon as notice is thus brought home to them, complainants bring this suit, and at a time when defendants had not been in possession of said land for a period of more than ten years, during all of which time the possession of defendants was not adversary, but in harmony with the record title, as tenants in common with complainants: Yet the Court below invoked against them the decisions in

Badger v. Badger, 2 Wall., 87, 95.
Godden v. Kimmell, 99 U. S., 201.
Galliher v. Cowell, 145 U. S. 368.
Felix v. Patrick 145 U. S., 317.

Naddo v. Bardon, 4 U. S., Apps., 642.
Lemoine v. Dunkin Co., 10 U. S., Apps., 227.
Railroad v. Sage, 4 U. S., Apps. 160.
Ashhurst App., 60 Penn. St., 290.

It is respectfully submitted, that in none of the above decisions, was the doctrines therein contained invoked in favor of parties with notice nor where the suit was brought within the statutory period of the State; nor where the delay in bringing suit had occasioned defendants no loss of evidence, and the excuse justifying the laches was caused by want of notice in the moving party.

The unanswered enquiry in these proceedings is: What duty devolved on plaintiffs to bring suit before notice was brought home to them by defendants in their demand for a power of attorney?

The Court below say they were presumed to know the law and to have known they were entitled to a bounty land warrant, or their father was so etitled.

Linked to this most unreasonable presumption is the assumption, that with no further notice, acknowledged, it was their duty to assume that a right available in their father's favor or in their favor, must have been cancelled, by the donation of that right, and it was their duty to have examined the archives of the Government and ascertained affirmatively the exercise of such right on attaining their majority, or they are guilty of contributory negligence.

And the Court below is unable to distinguish between the duty thus cast upon complainants, and the notice cast upon defendants in the recitals of their title spread upon the records of the county, the situs of the land in dispute.

If this be true, it challenges the doctrine of this Honorable Court, expressed in *Brush* v. *Ware*, 15 Peter, 108.

And if presumptions of such weird and fantastic character are to control the facts, then must fall the principals enunciated in *Lincoln* v. *French*, 105 U. S., 614; *Fresh* v. *Gilson*, 16 Pet., 327, and *Prevost* v. *Gratz*, 6 Wheat, 481.

All of which is respectfully submitted,

WILLLIAM C. MAYNE,
Of Counsel for Appellants.

JAN 17 1898
JAMES H. McKENNEY
Clerk

No. 94.

Brief of Hunter for Appts.

Filed Jan. 17, 1898.

In the Supreme Court of the United States,

OCTOBER TERM, 1897.

No. 94.

ELIZABETH WETZEL ET AL., APPELLANTS,

VS.

THE MINNESOTA RAILWAY TRANSFER COMPANY ET AL.

BRIEF FOR APPELLANTS ON QUESTION OF JURISDICTION.

EDWARDS & BROUGHTON, PRINTERS AND BINDERS, RALEIGH

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 94.

ELIZABETH WETZEL ET AL., APPELLANTS,

vs.

THE MINNESOTA RAILWAY TRANSFER CO. ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR APPELLANTS ON QUESTION OF JURISDICTION.

This appeal is taken from the decree of the United States Circuit Court of Appeals for the Eighth Circuit under the provisions of the last clause of section 3 of the Appellate Court, Act of March 3d, 1891.

"In all cases not hereinbefore, in this section, made final, there shall be of right an appeal or writ of error, or review of the case by the Supreme Court of the United States, where the matter in controversy shall exceed one thousand dollars, besides costs."

The decision of the Circuit Court of Appeals is made final by the act in all cases in which the jurisdiction is dependent entirely upon diversity of citizenship, and in cases arising under the patent laws, revenue laws, criminal laws, and admiralty cases.

In all other cases the right of appeal to the Supreme Court is preserved.

Press Publishing Co. v. Monroe, 164 U. S., 105.

The right of appeal is, therefore, preserved in all cases where the Circuit Court has jurisdiction of the case, by reason of the

fact that it arises under the Constitution or laws of the United States (Act March 3d, 1875, 18 Stat., 470); and it is immaterial to such a case, or the right of appeal therein, that other questions, not of a Federal nature, may be involved, or that the final decision, from which the appeal is taken, may be based upon other grounds.

Osborn v. United States Bank, 9 Wheat., 738, 821.

In this respect there is a marked difference between the appellate jurisdiction of the Supreme Court in cases taken from the highest Courts of the States and those coming from the Federal Courts. In the former, to give the Supreme Court jurisdiction, it must appear that the decision from which the appeal is taken was based directly and solely upon a Federal question, right or privilege; in the latter it is not material upon what the decision was based, provided the inferior Federal Court originally had jurisdiction of the case as one arising under the Federal Constitution or laws..

That the case is one arising under the Federal Constitution or laws must appear from the record at the time the suit is begun; it must appear from the plaintiff's complaint or statement of claim.

Tennessee v. Union and Planters Bank, 152 U.S., 454, 458.

This suit was brought by the appellants as complainants in the Circuit Court of United States for the Third Division of the District of Minnesota, by bill in equity to establish their right to a certain tract of land situated in Ramsay County, Minnesota.

Their claim to title was based on the provisions of section 9, of the Act of Congress of February 11, 1847, 9 Stat., 123, 125, c. 8, under which George W. Remsen, a soldier of the Mexican war, became entitled to one hundred and sixty acres of land. Remsen, having died in service, the right inured to the benefit of his surviving wife and children, and a warrant was duly issued to Elizabeth Remsen, the widow, and five children, all minors.

The Act of February 11, 1847, provides that in the event of the issuance of the land warrant to the minor children of such deceased soldier, "the legally constituted guardian of such minor

children shall, in conjunction with such of the children, if any, as may be of full age, upon being duly authorized by the Orphans' or other Court having probate jurisdiction, have power to sell and dispose of such certificate or warrant for the benefit of those interested."

Elizabeth Remsen qualified as guardian of all the children except Harriet A. Remsen, and subsequently sold and assigned the warrant for a small sum of money, without any order of the Orphans' Court of Philadelphia County, to one Nathan C. D. Taylor, who located the same and received a patent therefor. This is the land in controversy. Harriet A. Remsen appears to have joined in the sale of the warrant.

The complainants are the widow, Elizabeth Wetzel (formerly Elizabeth Remsen), and the surviving children are their descendents.

The complainants cause of action, as thus set forth in their bill of complaint, is based directly upon the Act of Congress of February 11, 1847, and arises directly out of it.

The minor children of the deceased soldier became entitled to a certain quantity of land by virtue of said Act and by virtue of the issuance of the warrant thereunder, and they have been wrongfully deprived thereof by the attempted assignment of their interest in that warrant, without the order of the Orphans' Court, required by the Act.

The case thus turns directly upon the interpretation of the Act of February 11, 1847. The right of property in the complainants was created by that act, and the cause of action arises out of the non-compliance with the provisions of that Act.

Complainants contend that the assignment and sale of the land warrant by the widow, Elizabeth Remsen (Wetzel), could be effective only as an assignment of her own interest therein; and having been made without an order of the Orphans' Court, as required by the provisions of the Act, could not operate as an assignment of the interest of the minor children, and that, therefore, the assignee did not and could not take title to their interest.

The correct decision of the question thus presented by the complainants depends upon the construction of the Act of Congress of February 11, 1847. This is not a case where one is

merely demanding a thing conferred upon him by the Constitution or an act of Congress, where the creation of the right in the thing is not in issue; but the question raised is whether the assignment of the widow, without the authority of the Orphans' Court, could act as an assignment of the interest of the minor children, and could create any title in the assignee, so far as their interest is concerned, except as Trustee.

It is well settled that when the correct decision of the case, as presented by the complainant or plaintiff, depends upon the construction of an act of Congress, it is a case arising under the Federal laws, and as such is cognizable by the Circuit Courts, irrespective of citizenship.

Tennessee v. Davis, 100 U. S., 259, 264.

"Cases arising under the laws of the United States are such as grow out of the legislation of Congress, whether they constitute the right or privilege, or claim or protection, or defence of the party, in whole or in part, by whom it is asserted."

Story on the Constitution, sec. 1647.
Osborn v. Bank of U. S., 9 Wheat., 738.
Doolan v. Carr, 125 U. S., 618, 620.

This case of Doolan v. Carr (1887) was an action of ejectment in the Circuit Court of the United States for the District of California, in which the plaintiffs claimed title under a land patent of the United States. No citizenship of either party was alleged, and this was urged as a ground of reversal.

The Court, speaking through Mr. Justice Miller, said (page 620):

"It, however, appears very clearly that the controversy turns upon the validity of the patent from the United States, under which the plaintiff claims title, and which was denied by the defendants. The Circuit Court for the District of California, therefore, had jurisdiction of the case as one arising under the Constitution and laws of the United States, within the meaning of the Act of March 3, 1875."

In the present case the complainants, the minor children of the deceased soldier and their heirs, claim under a land warrant of the United States, and assert their title to the land in

controversy, under the provisions of the Act of Congress, by which their right to that land warrant was created. Not only was the right, upon which their claim is founded, created by an act of Congress, but their present right of action arises from the provisions of that act, and turns upon it correct interpretation.

There is no pretense that the jurisdiction of the Circuit Court in this case depended upon diversity of citizenship, for the bill of complaint does not allege a diversity of citizenship, such as would have been necessary to have given the Court jurisdiction upon that ground; and even if such diversity of citizenship had been alleged, it would have been immaterial; because, if the complaint showed a cause of action arising under the Constitution or Federal laws, the fact that the Circuit Court might also have assumed jurisdiction on the ground of diversity of citizenship, does not affect the finality of the decision of the Circuit Court of Appeals, since the Act of March 3, 1891, specifically provides that the decisions of Circuit Court of Appeals (except in patent, revenue, criminal and admiralty cases) are final only when "the jurisdiction is dependent entirely upon the opposite parties to the suit in controversy, being aliens and citizens of the United States, or citizens of different States."

In this case the citizenship of the parties was not stated, as jurisdiction was not urged upon that ground, and a statement of citizenship was, therefore, unnecessary.

Doolan v. Carr, 125 U. S., 618, 620.

The record shows that statutory amount is involved. The bill of complaint alleges that the value of the land in controversy exceeds the sum of twenty-five thousand dollars, and the answer of the defendants places a very much higher value upon it.

Respectfully submitted,

ERNEST HOWARD HUNTER,
Of Counsel for Appellants.

No. 94.
Brief of Hinsdale for Appellants
Filed Jan. 19, 1898.
Supreme Court U. S.
FILED
JAN 19 1898
JAMES H. McKENNEY

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1897.

No. 94.

ELIZABETH WETZEL ET AL., APPELLANTS,

vs.

THE MINNESOTA RAILWAY TRANSFER CO. ET AL.,
RESPONDENTS.

BRIEF OF

JOHN W. HINSDALE,

OF COUNSEL FOR APPELLANTS.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1897.

No. 94.

ELIZABETH WETZEL ET AL., APPELLANTS,

vs.

THE MINNESOTA TRANSFER RAILWAY ET AL., RESPONDENTS.

BRIEF OF COUNSEL FOR APPELLANTS.

ABSTRACT OF THE BILL.

The bill filed by complainants on May 28, 1892, sets forth *inter alia:*

That the complainants are citizens of the States of Pennsylvania, New Jersey, and Maryland; and,

That the defendants are citizens, copartnerships, and corporations of—incorporated under, or doing business by virtue of—the laws of the State of Minnesota, and other citizens, copartnerships and corporations of a diversity of citizenship and States as set forth; and,

That complainants are the widow and heirs at law of one George W. Remsen, deceased, who became entitled to a certain land warrant, No. 28811, as therein set forth, for 160 acres of Government land, duly issued by the United States, on the 13th day of February, A. D. 1848, to Elizabeth Remsen, widow, Harriet A., Mary Ann, John Wesley, Elizabeth, and George W. A. Remsen, deceased, a soldier in the United States Infantry, killed in the Mexican War, which said land warrant was issued as aforesaid by virtue of the act of Congress, approved the 11th day of February, A. D. 1847, (a copy of which said land warrant is set forth in the bill, a certified copy of which appears on page 358 of the printed record); which said land warrant entitled them, pursuant to the ninth section of said act, to locate on any quarter section of Government land, subject to private entry, under the regulations and restrictions established by the Commissioners of the General Land Office; and,

That at the time of the issuance of said land warrant, and the assignment thereof, as set forth in said bill, the grantees therein were

the widow and minor children, and only heirs at law of said George W. Remsen, deceased, and all of said children under the age of fourteen, except the said Harriet A. Remsen, who was seventeen years of age; and,

That said widow was, on or about the sixth day of October, A. D. 1848, duly appointed the guardian of the persons and estates of said minor children, except the said Harriet A. Remsen, by the Orphans' Court of Philadelphia County, the court having jurisdiction of said minors and said guardian (a certified copy of which proceedings appears on pages 365, 366, of the printed record); and,

That on the eleventh day of October, A. D. 1848, at Philadelphia, in the State of Pennsylvania, the said widow, purporting to act for herself, and as guardian for said minor children, joined with the said Harriet A. Remsen, and together they attempted to assign said military land warrant by a written instrument (a certified copy of which appears on page 359 of the printed record), executed and delivered that day to one Nathan C. D. Taylor; and,

That said assignment was wholly void and of no effect, because said Orphans' Court never made any order or decree or took any other proceedings, authorizing said guardian to make said assignment; and,

That said widow was only entitled to a common law dower in said real estate, which could not be sold or assigned before admeasurement, and that said Harriet A. Remsen was a minor, and at the time of said assignment was intermarried with one Jacob Heyer, who did not join therein, and that both the conveyances of said widow and said Harriet A. Remsen were void, therefore, by the law of the said State of Pennsylvania; and that said Harriet A. Remsen did not know the nature of the instrument she signed, and was totally ignorant that she had any interest in the said warrant, or any lands, or that her father was, or ever had been entitled to said warrant, or said lands; and that she signed the instrument in such ignorance at the request of her mother, the said widow, who represented that the same was a receipt of a formal character; and that she never received any consideration therefor, and remained in ignorance of the matters stated in the bill until eight months before bringing suit; and,

That said Taylor, as the assignee aforesaid, located the same on the land in suit (a certified copy of the said location appears on pages 361–363 of the record), which said lands are now situate in the county of Ramsey, in the State of Minnesota; and,

That on the 20th day of March, A. D. 1850, the United States issued its patent to said Nathan C. D. Taylor as assignee as aforesaid (a certified copy of which appears on page 17 of the record), and which said natent was duly recorded in the office of the Register of Deeds of the said county of Ramsey, in Vol. "C" of Deeds, page 288; and,

That said Taylor afterward conveyed said lands and all the right, title and interest of said Taylor as to portions of said premises have passed to and are now claimed by some of said defendants as set

forth in said bill, who now claim to be the sole and absolute owners of portions of the said premises; and that all the said defendants claim title thereto by a chain of conveyances originating with said Taylor after the recording said patent in said office of the Register of Deeds; and,

That all the other defendants, as set forth in said bill, who claim to have judgments, mortgages or other liens on said land, claim the same under the first above referred to defendants, all of which said claims are subordinate to the title of the complainants; and that all of said defendants' titles and claims as aforesaid were acquired with full notice and knowledge of all the recitals in the said patent and the terms thereof; and,

That the complainant, Elizabeth Wetzel, is the said John Wesley Remsen's widow, and the said complainant, Harriet A. Vanzant, is the said Harriet A. Remsen; and,

That the said Mary Ann Remsen died on the twelfth day of June, A. D. 1882, leaving to survive her the complainants, Emma F. Hergesheimer and Maggie L. Beckman, her children and sole heirs at law, and that the complainant John Wesley Remsen, is the said minor John W. Remsen; and that the said Elizabeth W. Remsen died on the eleventh day of October, 1862, unmarried, and without issue, and her interest in said land, descended to the complainants herein, her sole heirs at law as provided by the laws of the State of Minnesota; that the said George W. A. Remsen died in 1878, leaving to survive him his widow, Mary J. Remsen, and his children, George W. Remsen, Clara B. Remsen and Mabel Remsen, as his sole heirs at law, the other complainants herein; and,

That none of the complainants or their predecessors in interest, except the said Elizabeth Wetzel, the widow of decedent, knew that said bounty land warrant was issued or that said widow as guardian had assigned the same as aforesaid or that the land in suit was located thereunder; that not until August, 1891, did they or any of them, except said widow, acquire any knowledge of the facts set forth in the bill; that their information was obtained by letters from parties in St. Paul, representing said defendants, or some of them, requesting them to execute quit claim deed for some interest which they were supposed to have in some lands somewhere in the State of Minnesota, the parties making said request declining to describe the particular land intended to be conveyed; and,

That in August, 1891, complainants employed the solicitors to this bill to investigate this title to said land and give opinions thereon; and that said investigation and preparation of information upon which to base this suit has been diligently prosecuted ever since, and suit begun as soon as it was possible under the circumstances for them to do so; and,

That complainants do ratify and confirm said location of said military land warrants, and aver that said defendants deriving any title under said patent are their trustees of said land, the value of which exceeds $25,000; and that defendants disaffirm said trust relation and claim to hold the same of their own right, freed from any equity

or right in the complainants or any of them, and claim said assignment to said Taylor was made in good faith, for a full and valuable consideration paid to said widow and said minor children which claim and defence is in no respect true; and that complainants deny that any consideration at any time was paid to said minor children, and that they have no knowledge, information or belief as to whether any consideration was paid to said widow and guardian; and

That defendants falsely pretend and claim that the chain of conveyance made to them was made in good faith and for full value, which complainants deny, and assert that each and every of the said conveyances were made with full notice of complainants' rights, and they have no knowledge, information or belief as to what considerations said defendants or their predecessors paid for said conveyances; and,

That said defendants falsely claim the improvements on said land to be of the value of $2,000,000, which complainants deny; but as to what said improvements are worth they have no knowledge, information or belief; and,

That defendants falsely claim that complainants and their ancestors and predecessors have for many years had knowledge that the land was owned by said Taylor and his grantees and persons claiming under him, and that said land was rapidly increasing in value, and that extensive improvements were being made thereon, all of which they deny and assert, that until a few months before suit commenced they had no such knowledge whatever, and further assert that said improvements were placed thereon with full notice and knowledge of complainants' rights, and that said judgments, mortgages and other liens thereon were acquired with full notice and knowledge of complainants' rights; and,

That said defendants claim, if they hold said premises in trust, more than six years have elapsed since the cause of action occurred before suit commenced, and it is therefore barred by the Statutes of Limitation of the State of Minnesota; which claim is without any foundation in fact, as no demand was ever made on said defendants, or any of them, to recognize said trust relation, or to account, or to convey, until about the date when suit was commenced; and that said trust relation was wholly unknown to them, and each of them, until within six months before suit commenced; and,

That defendants claim that complainants have acquiesced in the title of the defendants and their grantors, and have therefore been guilty of laches, which claim is false in every respect, and complainants assert that they or any of them have never in any manner acquiesced therein, or been guilty of any laches or delay whatever.

The prayer of the bill is for an accounting of the rents, issues and profits, and a conveyance of complainants' interest in said lands, and further equitable relief.

ABSTRACT OF THE ANSWER.

The answer admits:

That one George W. Remsen, in his lifetime, became entitled to

the land warrant in suit, and the issuance of the same to his widow and children; and that his widow was duly appointed by the Orphans' Court of Philadelphia County, a guardian of his minor children; and the assignment thereof, the location of the same, and the patent therefor to the lands in suit, and the various sundry and mesne conveyances thereof to the defendant as set forth in the bill.

The answer denies:

That said widow was entitled only to a dower interest in said lands, located under said land warrant,

And that the assignment thereof was void, and that the assignment thereof by Harriet A. Remsen was void; or that the said Orphans' Court never made any order or decree or took any other proceedings authorizing said guardian to sell, transfer or assign the interest of the said minors therein; or that by the laws of the State of Pennsylvania, and the act of Congress, the said guardian had no authority to sell, transfer or assign said land warrant; or that the said Harriet A. Remsen was ignorant of the contents of said assignment, when she signed the same believing it to be a receipt; or at that time she was a minor and *feme covert;* or that the complainants became acquainted with their pretended rights in the manner and form as set forth in the bill; or that they or their predecessors were ignorant of the said assignment, and the issuance of the said land warrant, or that said George W. Remsen was entitled to said land warrant.

The answer avers:

That said land warrant was personal property and salable and assignable as such, and was of the value of not more than one hundred dollars, and was a mere right to select lands; and, that the assignment thereof was duly made by said widow for herself and as guardian of said minor children and by said Harriet A. Remsen to said Taylor, as set forth in said bill; that said guardian was duly empowered to make said assignment and sale; and that under the laws of the State of Pennsylvania and of the United States, at the time of said assignment, it was not necessary to procure from said Orphans' Court or any other Court, any order or decree authorizing the sale of said land warrant; that nevertheless the said Orphans' Court of Philadelphia did, by the appointment of said Elizabeth Remsen as guardian, duly authorize her to sell, assign and transfer said land warrant, which said sale was made in good faith for full value, and was paid by said Taylor to said widow and children, and that thereupon said Taylor became the owner of said land warrant by purchase thereof; and, that said Harriet A. Remsen at all times knew the nature of said assignment, and received her share of the consideration thereof; and,

That the complainants have at all times known that the said George W. Remsen was a soldier in the Mexican War and entitled to a land warrant; and severally knew that the land warrant in question at the time when the same was issued was duly and properly issued to said widow and to them and the heirs of George W. Remsen, and from the date of its issuance to the date of its assignment the said widow and heirs had actual possession thereof; and,

That said Taylor, as the owner of the said land warrant, located the same upon the land in suit on the 31st day of October, 1849, and that the United States on the 20th day of March, 1850, duly issued a patent thereon to the said Taylor, conveying the same to him in fee simple, and said patent was recorded as set out in the bill; and that prior to the receipt of said patent the Land Department of the Government duly and properly allowed said Taylor to enter said lands, and duly accepted said land warrant in payment therefor; and,

That thereafter, on or about the 28th day of April, A. D. 1854, said Taylor conveyed said land to one Gilfillan, by a warranty deed for six hundred dollars, which was the value of said land, and said warranty deed was duly recorded; that thereafter, on or about the 28th day of April, 1854, the said Gilfillan conveyed said land to one McKenty, for one thousand dollars, by a warranty deed duly recorded; that thereafter, on the 22d day of May, A. D. 1854, said McKenty sold said land to one Pierse for two thousand dollars, being the full value of the said land, and a warranty deed therefor was duly recorded; that thereafter, on June 2d, A. D. 1855, said Pierse and wife conveyed said lands by warranty deed to one Pusey, for the sum of three thousand dollars, the full value thereof, and said deed was duly recorded; that thereafter, on May 4, A. D. 1860, the said Pusey conveyed said land to John W. Tatum, by warranty deed, for the price or sum of thirty-two hundred dollars, being the full value thereof, which deed was duly recorded; and,

That said purchasers acquired title to said lands without any knowledge or notice of any claims of said complainants or their predecessors in interest; and,

That thereafter said Tatum died, devising by will the said land to his children—Samuel C., John R., and Hannah Tatum—and said will was duly admitted to record in said Ramsey County, on June 11th, 1883; and,

That at the time said land was entered by said Taylor, as assignee as aforesaid, it was not worth over $1.25 an acre, and is now worth over $1,000,000, exclusive of the improvements thereon, and is now owned by the defendants herein as *bona fide* purchasers thereof; and,

That said land has for many years been within the corporate limits of the city of St. Paul, and is platted into additions thereof and subdivided into blocks and lots, and has many dwellings, occupied by actual residents, and other improvements thereon to the value of over $2,000,000; and,

That said defendants and their grantors have been in possession thereof, under said titles, openly and notoriously, and exercised acts of ownership and paid the taxes and assessments thereon for nearly forty years to the amount of many thousand dollars; and that said land has been sold from year to year, notoriously in the possession of various persons with the knowledge of complainants, and their ancestors and predecessors, who for many years have had full knowledge that said land was owned by said Taylor and those claiming under him, as set forth in the bill, and they have known of its in-

creasing value, and its location within a great city, and that elevators, warehouses and railroads were erected thereon, without making any claim thereon or demand of any right therein until suit brought; and,

That defendants have become the *bona fide* owners and purchasers from said Tatum, through various persons, by warranty deeds, for full value, and in every instance without any knowledge or notice of any of the facts set forth by complainants, or either or any of them; and,

That the improvements thereon, as set forth in schedule "A," were made in good faith, without any such notice or knowledge; and,

That the mortgages as set forth in Schedule "B" were received in the same manner without any such knowledge; and,

That the defendants, their grantors and ancestors, have been in open, notorious and continuous adverse possession of said lands for more than twenty years before suit was brought, claiming under said titles, and complainants were not possessed of said land, or any part thereof, within fifteen years before suit brought; and,

That if defendants hold said land in trust, as alleged in the bill, more than six years have elapsed since said cause of action accrued and before commencement of this suit, and it is barred by the statutes of Minnesota; and that complainants and their ancestors knew the matters set forth in the bill more than six years before suit brought, and those who were infants at the time of said assignment and patent to said Taylor were acquainted with these facts upon attaining their majority more than six years before suit brought; and with such knowledge made no claim, demand, or gave any notice of the same, but acquiesced in the title of said defendant and those under whom they claim, and are therefore guilty of laches; and with full knowledge of all the facts set forth in the bill and answer a long time before suit brought, and after attaining their majority, did ratify and in all respects confirm said assignment of said land warrant to said Taylor, its deposit with and receipt by the United States and the issuance of said patent thereon to said Taylor in his own right and free of any trust, which and similar acts of ratification have since been frequently repeated, the last one being in and by the bill filed, to which defendants crave leave to refer.

THE FACTS.

A. Those being admitted by the answer are:

That George W. Remsen, deceased, in his lifetime became entitled to said land warrant in suit for enlistment and services in the United States Army, under the terms of an act of Congress, approved the 11th day of February, 1847, entitled "An act to raise for a limited time an additional military force, and for other purposes," and the various amendments thereto, or upon the same subject. That said Remsen having died prior to the issuance of said warrant, his widow and children became entitled to have the same issued to them, and thereafter the United States duly issued a land warrant numbered

28811 to the widow and children of said deceased soldier, viz., to Elizabeth Remsen, widow, to Harriet A. Remsen, Mary Ann Remsen, John Wesley Remsen, Elizabeth Remsen, and George W. A. Remsen, who were the children and heirs at law of George W. Remsen, deceased. That upon the issuance of said land warrant aforesaid, the said widow and children became the owners thereof;

That said Elizabeth Remsen, widow, was, on the 6th day of October, A. D. 1848, duly appointed guardian, by the Orphans' Court of Philadelphia County, of said minor children, as in the bill of complaint set forth; and that said court had jurisdiction of the subject-matter and of the parties; that the said assignment was made as set forth in the copy of the same in the bill; and,

That the various and sundry *mesne* conveyances to the various parties defendant were from the heirs of John W. Tatum, deceased, whose title thereto was predicated upon the patent of the land located under said bounty land warrant, which said patent was duly recorded on January 28, A. D. 1852, in the office of the Register of Deeds of Ramsey County, in the State of Minnesota, in book "C" of deeds, on page 288, as set forth in the said bill; and,

That prior to the receipt of said patent the Land Department duly and properly allowed the said Taylor to enter the said lands, and duly accepted the said land warrant of said Taylor in payment therefor.

B. Those admitted and agreed to by stipulations of counsel. (See pages 197–200 of the printed record.)

C. Those established by witnesses called on the part of complainants and defendants are:

That the complainants are the widow and heirs at law of George W. Remsen, deceased, as averred in the bill of complaint. (See exhibits 2 and 3 of complainants; and pages 35–39, 40, 42–44, 62, 73–77, and pages 55–60, 105, 194 of the record); and, that the said dececedent died on the 11th day of October, 1847, intestate (see exhibits 3 of complainants, and page 89 of the record); and, that the said widow intermarried with Paul Wetzel on June 28, 1864, who died on the____day of_____A. D._____ (See exhibits 1 and 3 of the complainants), and, that the said Harriet A. Remsen was born on the 2nd day of January, 1832, and was intermarried to Jacob Heyer on the 6th day of August, 1848, and divorced therefrom after the late rebellion, and thereupon married Mr. Vanzandt, who died four years ago. (See exhibit 3 and pages 37, 39–40, 50, 94, 96–97, 104, 128, 147–148 of the record); and, that the said Mary Ann Remsen was born on the 12th day of August, A. D. 1835; and intermarried with Daniel C. Becket on the 29th day of June, A. D. 1851, who died, leaving to survive him the said Mary Ann Becket, who died June 12, 1882, intestate, leaving to survive her the said Emma F., intermarried with J. U. Hergesgeimer on June 5, 1882, and the said "Laura" Mary L. S, intermarried with George W. Beckman on July 9, 1878. (See exhibit 3 of complainants, and pages 38, 61, 79–81, 105–107, 118, 125, 127–128), and,

That the said John Wesley Remsen was born on the 8th day of November, A. D. 1837, and intermarried with Martha B. Moore. (See exhibits 3 complainants, pages 37, 62, 88 of the record), and,

That the said Elizabeth Remsen was born on the 22nd day of February, A. D. 1840, and died, unmarried and without issue, on the 11th day of October, A. D. 1862 (see Ex. "3" complainants, page 38 of the record); and

That the said George W. A. Remsen was born on the 18th day of September, 1842, intermarried with Mary J. Derbishier, on the 19th day of June, A. D. 1864; and was last heard of alive on the 28th day of August, 1871; and left to survive him,

The said Mary J. Remsen, his widow, and the said George W. Remsen, who was born on the 2nd day of July, 1866, intermarried with Sallie Shaw, and the said Clara B. Remsen, who was born on the ---- day of ------, and the said Mabel Remsen, who was born on the 28th day of May, 1871 (see Ex. "3" complainants; and pages 37, 60-61, 88, 105-106, 76, 77, 127, 128, 134, 147) and,

That the said Elizabeth Wetzel made application to the government as the widow of the said George W. Remsen, through her counsel, for a pension and pay due him, and that she got the pension, and the counsel got the land warrants (pages 39, 39, 200, 201, 52, 53, 91, 92, 141,) and,

That on Oct. 6th, 1848, she was appointed guardian of said minor children without security (pages 91, 92, 100, 114, 115, 204, 205 of the record); and, that she made her mark as it appears on said assignment of said land warrant for herself and as guardian of said minors without any order or decree of said Orphan's Court; and that her daughter, the said Harriet A. Heyer, joined with her in making her mark to the same (pages 53, 55, 99, 99, 108, 112, 141 of the record); and,

That at the time of making her mark thereto, she could neither read nor write, nor was the contents of the instrument at that time or since ever read or made known to her or to her daughter, the said Harriet A., who could neither read nor write; and said Harriet was at that time intermarried with Jacob Heyer who did not join with her in the same (39, 40, 42, 43, 49-50, 94, 96 97, 99, 107-108, 110-114, 115, 146, 147 of the record); and,

That she received, at the time of making her mark, the sum of $107, less attorneys' fees and expenses; but that said Harriet A. Heyer and the other minor children did not receive any of said sum or any other money therefor (48, 49, 117 of the record); and,

That she never told the minor children or her grandchildren or any of the complainants about receiving the land warrant or her appointment as guardian of said minors, or her making her mark to the assignment; that the elder of her children knew that their father was a Mexican soldier and that she received a pension on account of his death in the Mexican War (40, 51–53, 90–92, 99–103, 78, 82, 82, 66–69, 114–117, 119, 123, 149, 150, of the record); and that on the 31st day of October, 1849, the said Nathan C. D. Taylor deposited the said land warrant in the Land Office at Still-

water, Minnesota, and did then and there elect to locate the same on the land in suit, in satisfaction of said land warrant as assignee of said Elizabeth Wetzel in her own right and as guardian of said minor children (202–203 of the record); and,

That on the 20th day of March, 1850. a patent was granted by the Government in pursuance of the satisfaction and cancellation of said land warrant for the land in question, reciting that the land was granted to said Taylor, as assignee of said Elizabeth Remsen, in her own right and as guardian of said minor heirs, and on the 28th day of January, A. D. 1852, recorded in Ramsey County, Minnesota, in book "C" of deeds, page 288—(28–29, 200 of the record); and that on the 28th day of April, A. D. 1854, one Gilfillan, a clerk then in the said land office at Stillwater, Minnesota, received a general warranty deed for said land from said Taylor, reciting a consideration for $600, which he (the said Gilfillan) took for one McKenty, to whom, by deed bearing even date, reciting a consideration of $1,000, he transferred it; that McKenty actually paid only $700; he, said Gilfillan, receiving a hundred dollars for the transaction. (Defendants' Exhibits Nos. "7 and 9"—153–155 of the record). And that the said McKenty a month after conveyed the land by general warranty deed to one Pierse, reciting a consideration of $2,000, and that said Pierse, a week thereafter, executed a title bond to said land to one Pusey, and by general warranty deed, dated June 2, 1855, said Pierse conveyed said land to said Pusey, reciting a consideration of $3,000, and that by general warranty deed, dated May 4, 1860, said Pusey conveyed said land to John W. Tatum, reciting a consideration of $3,200, but the real consideration was the cancellation of a debt of $3,000 which he, the said Pusey, owed the said Tatum;

That said Pusey had also by deed dated July 19, 1858, granted to the M. & P. R. R. Co., a right-of-way across said property, reciting a consideration of one dollar. (Defendants' Exhibits, 10, 2, 3, 4, 6—155, 141–144 of the record). And that at the time the said Pusey acquired the deed from said Pierse, he knew the source of title by an abstract thereof, which carried the title back to the patent, which showed that it was located upon a land warrant, for when lands are purchased by cash they have the word "Entered," marked thereon, and when entered upon a land warrant the word "Located," marked thereon;

And at the time of the conveyance of Pierse to him he lived in St. Paul continuously from 1854 to 1883; and that he did not examine the patent or never authorized any one else to examine it for him (250–255 of the record); and,

That the said John W. Tatum, to whom said Pusey conveyed died on the 15th day of June, 1866, testate, and his estate was duly probated in Ramsey county, Minnesota, and by final decree vested in John R. Tatum, Samuel C. Tatum and Hannah Tatum, share and share alike;

That the said John R. Tatum, at the time of the probate as aforesaid, resided in the State of Delaware, and by deed dated June 5, 1873, together with his wife, conveyed his undivided one-third in-

terest in the land in question to his brother, the said Samuel C. Tatum, reciting a consideration of $3,350;

That said Samuel C. Tatum died about five years ago (1887); and left to survive him, his widow, Eleanor Tatum, and his children, Mary C. Tatum, Amy T. Hilles and Elizabeth T. Long; and,

That the said Hannah Tatum conveyed her interest in the remaining land to the estate of the said Samuel C. Tatum for $35,500, payable $10,000 cash, and the balance, $5,000 semi-annually, the last instalment being paid a year or so before suit brought;

That the said John R. Tatum knew the land was located with a land warrant, but did not examine the patent, and that he negotiated the sale of Hannah Tatum's interest to the estate of Samuel C. Tatum; that he did not inform the parties of anything about the title; and that the said Hannah Tatum, by letters of attorney, dated April 29th, 1880, authorized the said Samuel C. Tatum to sell and convey her interest in the land in question; and,

The devisees of said Samuel C. Tatum, deceased have by mesne and sundry conveyances, conveyed by general warranty deeds the lands the subject of this suit, to the various defendants set forth in the bill, excepting the said conveyance of said Pusey to the Minnesota and Pacific Railroad of a right of way, as set forth in defendants' Exhibit No. "10;" (see defendants' Exhibits "1," "10," and "16," 138-141, 155, 193, 196 of the record); and,

That the defendants, or their predecessors in title, had no "actual notice" or knowledge of the rights and claims of the complainants, or their predecessors, at the time they purchased the said land and put improvements thereon, (143, 153, 160, 170, 170, 189, 196, 197 of the record); and,

That the land in question, located as aforesaid, is situated now in what is known as the Midway District, within the corporate limits of St. Paul, Minnesota, and is bounded on the north by Macalaster Park, on the east by Hamline, on the west by St. Anthony Park, and on the south by Merriam Park;

That the westerly sixty acres is known as the Transfer property, now occupied by the defendants, the Minnesota Transfer Company; that east of said Transfer property are blocks 1, 2, and 3, in what is known as the Lovering Factory, Warehouse Transfer property, now occupied also by the Deering and Sheppard warehouses, and all the other land embraced in the suit is known as "Midway Heights." (Defendants' Exhibits "12," "13," "14," "15," 177, 180, 183, 185 of the record); and,

That the Minnesota and Pacific Railroad was built across said land by virtue of the right of way of said Pusey (Defts. Ex. No. "6,") in 1862, it commenced to grade its road in 1858, and the tracks were laid in June, 1862, and was used as a railroad track up to 1876; it was subsequently sold to the defendants the Minnesota Transfer Railway Company (144, 156, of the record); and,

That the westerly sixty acres of the land in suit was entered upon by the defendants, the Minnesota Transfer Railway Company, as the grantees of the St. Paul, Minneapolis and Manitoba Railroad Company under their deed from Samuel C. and Hannah Tatum, dated

May 18, 1880 (defendant's exhibit, No 11) for said sixty acres; that said Transfer Company acquired title from said railroad company within a year after the said conveyance of said Samuel C. and Hannah Tatum; and that said Transfer Company commenced improvements thereon by laying its tracks in 1881 and 1882, and since then by putting up freight houses and stock-yards (159–160 of the record); and,

That the other one hundred acres of the land in question was platted in 1885, and at the time this suit was brought there were erected thereon the said Lovering factory, the Deering & Sheppard warehouses, and about sixty dwelling houses, which were constructed during the years 1886, 1887, 1888, 1889, 1890 and 1891 (158, 161, 188–188, 192, 196 of the record); and that all the land now occupied by the defendants, except the said right of way to the M. & P. R. R., was conveyed by said Tatum through his local agent, H. S. Fairchild, of St. Paul, Minnesota, to be platted and sold for them, and it was sold and conveyed to the defendants as set out in the bill, and in the answer and schedule, with the exception of twenty-four lots, the title of which still remain in the devisees of said Samuel C. Tatum; deceased (187, 196 of the record); and,

That the evidence as to the value and improvement of the said land was offered by defendants, subject to objection as to its relevancy, materiality and competency, and to be determined by this Court upon the hearing of the case (196 of the record), which is as follows:

That land warrants for 160 acres of land had a market value at the time of the assignment of the land warrant in question, and were rated at $112 to $125, and sold for five or ten dollars less in the Eastern cities (153–155 of the record); and,

That the land located in question was not worth over two or three dollars an acre in 1851; and from 1847 to 1850, not over one dollar and a half an acre; then fron 1850 to 1857 the said land increased in value, then remained dormant until 1869 or 1870, when it increased in value again until 1873, and then again in 1874 until 1887, when there was a great depression in the land market, which has continued ever since; and that the large increase in value of said land was in 1885, 1886 and 1887. (156, 157, 176, 179, 189, 196, of the record); and,

That the said land at the time of the commencement of this suit, exclusive of improvements was valued at from a million to a million one hundred and seventy-seven thousand five hundred dollars. (162, 172, 184, 188, of the record); and,

That the improvements upon said land at the time of the commencement of this suit were valued as follows:

On the Minnesota transfer	$231,000 00
On the Lovering factory warehouse transfer	5,930 83
And grading thereon	11,000 00
And additions thereon made by Winslow & Bros	500 00
And dwellings on the Midway Heights, exclusive of grading	100,000 00

That these values represent the first cost of these improvements; but all this evidence of the value of improvements upon the land in suit is offered only upon the merits of the case, and not in lieu of the assessment thereof, as provided for by the Claimant Act of the State of Minnesota, and if necessary, this question is to be tried *de novo* (160, 162–163, 168–169, 177, 184–185, 196 of the record); and that the additional facts are—

That George L. Hendrickson, a resident of Ramsey County, Minnesota, had knowledge of the land in suit, and heard about the claim of the heirs of said George W. Remsen, deceased, these complainants, and had a conversation with the said Elizabeth Wetzel and Mary J. Remsen at Philadelphia, about the second week of December, 1889, at the home of said Elizabeth Wetzel, whom he found to be the widow of said George W. Remsen, and had married again, and her name was Mrs. Wetzel.

That he stated to her that his errand was the obtaining of a power of attorney from her and the heirs of George W. Remsen to obtain title to lands in Minnesota.

That he ascertained by questioning her that she had sold a Mexican land warrant, and that Isaac Boleau, a Justice of the Peace, had attended to the business for her; that he, Hendrickson, told her there was a defect in the title, but didn't specify what; that the said Mary J. Remsen was present, but knew nothing about it; that Mrs. Wetzel talked a good deal, but not much to the point; that he did dot see any of the other heirs; that he met Mr. William C. Mayne at that time, but has no knowledge of his having consulted with Mrs. Wetzel and Mary J. Remsen at that time;

That he did not advise Mrs. Wetzel or Mrs. Remsen where the land was situated, or in what manner the title to the land was defective—(194, 195, 41–42, 45–48 63–71 of the record); and,

That the said Mary J. Remsen had no knowledge previous to Hendrickson's visit in December, 1891, that her mother-in-law, Mrs. Wetzel, had ever had or sold a land warrant, and did not know to whom or when she sold it, or in what capacity, or that the land was located thereon and patented to Nathan C. D. Taylor, or where the land was situated, or the other matters set out in the bill, until the meeting at Mr. Mayne's office in August, 1891—(63–71 of the record); and,

That the said Mary J. Remsen advised her children, the heirs of George W. A. Remsen, deceased, the said Clara B. Remsen, George W. Remsen, and Mabel Remsen, of Mr. Hendrickson's visit, as also Mrs. Beckman and Mrs. Hergesheimer, daughter and heirs of Mary Ann Remsen (Becket), deceased—(67, 68, 69, 77–79 of the record); and,

That she was married to George W. A. Remsen in 1864, and lived with him until 1871, when he went out to Iowa, and was last heard of alive in August, 1871; that during the seven years they lived together, they resided four years in the State of Delaware—(60–61, 67, 71–72, 77–79, of the record); and,

That the said Emma F. Hergesheimer lived in the State of New

Jersey at the time of Hendrickson's visit in December, 1889, and has lived there ever since; that she knew of his visit through her grandmother, Mrs. Wetzel, about six weeks after his visit; that she understood he came on about land out west that had belonged to her grandfather, George W. Remsen, deceased, which had been sold; that she had never known of any right or claim of her grandfather to land, but her grandmother said it was so; that it was a number of years back and was never spoken of before. She said it was a land warrant; that she only saw and talked with her sister, Mrs. Beckman, about it a month or two thereafter; that Mrs. Beckman had seen her grandmother, Mrs. Wetzel, and knew about as much of it as she did (120–122, 151–151 of the record); and,

That the said Clara B Remsen, George W. Remsen and Mabel Remsen knew that Mr. Hendrickson had made a visit to Philadelphia about some land in the west, but didn't know it was about a land warrant, or any of the other matters set up in the bill, until the meeting at Mr. Mayne's office, in August, 1891; the said Mabel Remsen being a minor at that time of said meeting; and said Mabel and Clara B. Remsen were not present at the meeting at Mr. Mayne's office in August, 1891 (77–79, 133–135, 148–149 of the record); and

That the said John Wesley Remsen never had any knowledge of the visit of said Hendrickson, or any of the matters set up in the bill, until the summer of 1891; that he had never been consulted and was not present at the meeting at Mr. Mayne's office in August, 1891; that he lived in the State of Maryland, and had resided there since he was twenty years of age (88, 92–94 of the record); and

That the said Harriet A. Van Zandt first heard of the visit of Hendrickson about two years ago; that she was living at that time in Lycoming County, Pennsylvania, and her daughter wrote her to come home, which she did, and they told her about the visit of Hendrickson and some claim about a land warrant (98, 101–103 of the record); and

That the said widow, Elizabeth Wetzel, broke up housekeeping when John Wesley Remsen was twelve years of age, and the brothers and sisters lived at different places thereafter, and did not often see each other (89–90, 96–103, 114–114 of the record); and

That the heirs, those of the complainants who were present at Mr. Mayne's office in August, 1891, first learned the matters set out in the bill of complainant, and all the complainants learned these matters at that meeting or subsequent thereto, and the said Mayne then and thereafter first acted for them as their attorney and agent in this matter; that said Mayne had communicated with all the heirs except the heirs of G. W. A. Remsen, deceased, the fact that a Mexican land warrant had been issued to the widow and heirs of George W. Remsen, deceased, for service in the Mexican war, and that there was a question as to the validity of the sale and assignment thereof, and a chance to claim the land located under said warrant, without disclosing to them the location of the land located under the said warrant; that the question of giving a power of attorney by the heirs to another party than himself for the purpose of bringing suit and

making settlements for their interest in said land was discussed a short time after the visit of said Hendrickson; but he had not apprised them of the nature or character of the invalidity of said sale or the other matters set up in said bill until and after the meeting at his office in August, 1891. (63, 69, 77–78, 89, 92–93, 98, 103, 119–121, 134, 135–137, 147, 150, 197, of the record) and, that this suit was brought as soon thereafter as it was possible to do so under the circumstances (198 of the record).

ASSIGNMENT OF ERROR.

1st. The said Court erred in not ruling and adjudging and decreeing that the sale of the land warrant by the widow and heirs of George W. Remsen, was absolutely null and void, as alleged in the bill of complaint.

2nd. The said Court erred in not adjudging and decreeing that the sale of said land warrant was at least absolutely null and void as to the children of said George W. Remsen, who were minors at the date of sale.

3d. The Court erred in not adjudging and decreeing that the sale and assignment of said land warrant was at least absolutely null and void as to the minor children of said George W. Remsen, for and on behalf of whom his widow executed the said assignment.

4th. The Court erred in not adjudging and decreeing that said minor children referred to in the last assignment were under no obligation to disaffirm said sale and assignment after becoming of age.

5th. The Court erred in not adjudging and decreeing that the sale and assignment of said land warrant was a conveyance of real estate.

6th. The Court erred in not adjudging and decreeing that the vendee of said land warrant as well as purchasers under him, including the defendants in this case, were trustees of the legal title to said lands or some part of them or interest therein and bound in equity to convey to the plaintiffs or part of them as prayed and alleged in the bill of c mplaint.

7th. The Court erred in not adjudging and decreeing that the plaintiffs or some of them were the equitable owners of the real estate described in the bill or some part thereof or interest therein.

8th. The Court erred in not adjudging and decreeing that the defendants in this cast were purchasers with full notice of all the equities of the complainants and each of them.

9th. The Court erred in adjudging and decreeing that the complainants or any of them were guilty of such delay or laches as to

bar their right to recover the premises described in the bill in this suit.

10th. The Court erred in adjudging and decreeing that the bill of complaint in this suit be dismissed.

11th. The Court erred in adjudging and decreeing that the decree entered herein in the Circuit Court of the United States in and for the District of Minnesota, third division, be affirmed.

POINTS.

The complainants maintain that—

1. George W. Remsen was entitled, under the Act of Congress, to a land warrant, which vested in him to his widow and children a present interest.

2. The assignment of the warrant by a guardian without authority of court was void as to the minors.

(*a*) Their right, under the warrant, was real and not personal property.

(*b*) Even if personal property, the Act of Congress prohibited such assignment.

3. The assignment of a land warrant by a *feme covert*, who is a minor, is void. If executed in ignorance, she is not called upon to disaffirm the act before she is informed of its true character.

4. The improvident issue of the patent in the absence of the complainant, did not divest them of their rights.

5. The issue of the patent raised no presumption contrary to the record and the truth, that the assignment had been authorized by the Orphans' Court.

6. By the assignment of the warrant and the subsequent issuance of the patent to Taylor a constructive trust was created through a constructive fraud.

7. The successive grantees of Taylor were fixed with constructive notice of all that the records in Washington and in Minnesota contained relative to the title of the land, including the guardian's want of authority.

8. The complainants have a right to adopt and ratify the location of the patent by their constructive trustee.

9. The statute of limitation of Minnesota do not apply to a suit in the Federal Court which is purely equitable.

10. The complainants' right is not barred by the statute of limitations.

11. The complainants' right to relief is not barred by laches or acquiescence.

ARGUMENT.

I.

GEORGE W. REMSEN WAS ENTITLED, UNDER THE ACT OF CONGRESS, TO A LAND WARRANT, WHICH VESTED IN HIM AND HIS WIDOW AND CHILDREN A PRESENT INTEREST.

The claim is founded on a land warrant issued under the Act of Congress of February 11, 1847, 9 Statutes at Large, p. 123, sec. 9 of this Act reads:

"That each non-commissioned officer, musician or private, enlisted or to be enlisted in the regular army, or regularly mustered in any volunteer company for a period of not less than twelve months, who has served during the present war with Mexico, and who shall receive an honorable discharge, or who shall have been killed, or died of wounds received or sickness incurred in the course of such service, or who shall have been discharged before the expiration of his term of service in consequence of wounds received or sickness incurred in the course of such service, shall be entitled to receive a certificate or warrant from the war department for the quantity of one hundred and sixty acres, and which may be located by the warrantee or his heirs-at-law at any land office of the United States, in one body, and in conformity to the legal sub-divisions of the public lands in such district then subject to private entry; and upon the return of such certificate or warrant, with evidence of the location thereof having been legally made to the general land office, a patent shall be issued therefor. That in the event of the death of any such non-commissioned officer, musician or private, during service, or after his discharge, and before the issuing of a certificate or warrant as aforesaid, the said certificate or warrant shall be issued in favor and inure to the benefit of his family or relatives, according to the following rules: First to the widow and to his children; second, his father; third, his mother. And in the event of his children being minors, then the legally constituted guardian of such minor children shall, in conjunction with such of the children, if any, as may be of full age, upon being duly authorized by the Orphans' or other court having probate jurisdiction, have power to sell and dispose of such certificate or warrant for the benefit of those interested."

By the foregoing statute George W. Remsen became entitled to a certain certificate or warrant for the quantity of 160 acres of public land which he or his heirs, being the widow and minor children, might locate under said warrant at any land office in the United States.

This grant by Congress amounted to an absolute donation by the government to the decedent and his heirs of one hundred and sixty acres of land, not indeed of any specific land, but any quarter sec-

tion of any public land in the United States subject to private entry, in one body and in conformity to the legal subdivisions of the public land surveys.

Rutherford *v.* Greene's Heirs, 2 Wheat., 196.
Fremont *v.* The United States, 17 Howard, 559.
U. S. *v.* Reading, 18 How., 6.

In *Rutherford* v. *Greene*, 2 Wheat., 196 at 205, Mr. Chief Justice Marshall said:

"It is clearly and unanimously the opinion of this Court that the Act of 1782 vested a title in General Greene to 25,000 acres of land, to be laid off within the bounds allotted to the officers and soldiers, and that the survey made in pursuance of that Act, and returned in March 1783, gave precision to that title, and attached it to the land surveyed."

In *Fremont* v. *The United States*, 17 How., 542, at page 558, Mr. Chief Justice Taney said:

"It is argued that the description is so vague and uncertain that nothing passed by the grant, and that he had no vested interest until the land was surveyed and the part intended to be granted severed by lines or known boundaries from the public domain. But this objection cannot be maintained. It is true that, if any other person within the limits where the quantity granted to Alvorado was to be located, had afterwards obtained a grant from the Government, by specific boundaries, before Alvarado had made his survey, the title of the latter grantee could not be impaired by any subsequent survey of Alvarado. As between the individual claimants from the Government the title of the party who had obtained a grant for the specific land would be the superior and better one. For by the general grant to Alvarado the Government did not bind itself to make no other grant within the territory described until after he had made his survey. But, as between him and the Government he had a vested interest in the quantity of land mentioned in the grant. The right to so much land, to be afterwards laid off by official authority, in the territory described, passed from the Government to him by the execution of the instrument granting it."

In *United States* v. *Reading*, 18 How., 1, it is decided that

"Although the title did not become definite until the grant was approved by the Departmental Assembly, yet an immediate interest passed by the grant from the Governor, whose duty it was (and not that of the grantee) to submit the case to the Departmental Assembly; and if they should reject it, then to lay the case before the Supreme Government of the Republic."

The warrant vested a present title in them, but a location thereunder was necessary to give it precision and attach it to any particular tract. The grant then becomes certain, and by relation has the

same effect upon the selected parcel of land as if the grant itself had specifically described the land located or surveyed thereunder.

Hornsby *v.* United States, 10 Wall, 225.
Schulenberg *v.* Harriman, 21 Wall, 44.
Leavenworth Railroad *v.* United States, 92 U. S., 741.
Railroad *v.* United States, 103 U. S., 429.
Van Wyck *v.* Knevals, 106 U. S., 360.
Wright *v.* Roseberry, 121 U. S., 488.
St. Paul and Pacific R. R. *v.* N. P. R. R., 139 U. S., 1.
Desert Salt Co. *v.* Tarply, 142 U. S., 241.

In *Hornsby* v. *U. S.*, 10 Wall., 225, 236, Mr. Justice Field said: "The greater number of the grants which have come before this Court for examination have belonged to the second-class. They have usually designated the land ceded by the general name of the valley or locality where situated, with a clause annexed that the concession was limited to the specific quantity mentioned, and that the magistrate of the viocinage, of whom possession was to be solicited, should cause the same to be surveyed, and that any surplus existing should be reserved for the use of the nation.

"When the first grant of this kind was presented for the consideration of this Court, in the Fremont case, 17 Howard, 542, 558, which was for ten leagues within a tract of much greater extent, it was objected that the grant was void for uncertainty of description, and that no interest passed to the grantee until the quantity was surveyed and severed by known boundaries from the public domain; but the Court held the objection untenable, and that, as between the government and the grantee, the latter had a vested interest in the quantity of land mentioned. "The right to so much land," said the Chief Justice, in delivering the opinion of the Court, "to be afterwards laid off by official authority in the territory described, passed from the Government to him by the execution of the instrument granting it." And in support of the principle asserted, the Court cited the case *Rutherford* v. *Greene's Heirs*, reported in 2d Wheaton, page 196.

* * * * * *

"The instrument purports on its face to transfer a full title to the property solicited. If valid when issued, it passed according to the decision in the Freemont case, to the grantees, a present and immediate interest in the quantity of land specified, to be subsequently laid off by official authority."

In *Schulenberg* v. *Harriman*, 21 Wallace, 44, it was decided:

"That the Act of June 3d, 1856, and the first section of the Act of May 5th, 1864, are grants *in præsenti* and passed the title to the odd sections designated to be afterwards located. When the route was fixed their location became certain, and the title, which was previously imperfect, acquired precision and became attached to the land."

In *Leavenworth* v. *U. S.*, 92 U. S., 733, construing an act of Congress which gave to the State of Iowa a certain quantity of land, not located, in aid of a certain railroad, Mr. Justice Davis said, (p. 741):

"It creates an immediate interest, and does not indicate a purpose to give in the future. 'There be and is hereby granted' are words of absolute donation, and import a grant *in præsenti*. This Court has held that they can have no other meaning; and the land department, on this interpretation of them, has uniformly administered every previous similar grant. *Railroad Co.* v. *Smith*, 9 Wall, 95; *Schulenberg* v. *Harriman*, 21 id, 60; 1 Lester, 513; 8 Opin. 257; 11 id. 47. They vest a present title in the State of Kansas, though a survey of the lands and a location of the road are necessary to give precision to it, and attach it to any particular tract. The grant then becomes certain and by relation has the same effect upon the selected parcels as if it had specifically described them. In other words, the grant was a float until the line of the road should be definitely fixed. But did Congress intend that it should reach these lands? Its general terms neither include nor exclude them. Every alternate section designated by odd numbers within certain defined limits, is granted; but only the public lands owned absolutely by the United States are subject to survey and division into sections, and to them alone this grant is applicable."

In *Railroad Co.* v. *Baldwin*,103 U. S., 429, Mr. Justice Field said

"The act is a present grant, except so far as its immediate operation is affected by the limitations mentioned. "There is hereby granted" are the words used, and they import an immediate transfer of interest, so that when the route is definitely fixed the title attaches from the date of the act to the sections, except such as are taken from its operation by the clauses mentioned."

In *Van Wyck* v. *Knevals*, 106 U. S., 360, it appeared that

"Subject to the exceptions therein mentioned, the act of July 23, 1866, c. 212, granted for the use and benefit of the St. Joseph and Denver City Railroad Co., the odd numbered sections of public land within a prescribed distance on each side of the proposed road. The Company duly filed in the office of the Secretary of the Interior a map showing the definite location of the line of the road. It was held that the grant was *in præsenti*, and attached to those sections as soon as the map was so filed; and that no valid adverse right or title to any part of them could be acquired by a subsequent settlement or entry."

In *Wright* v. *Roseberry*, 121 U. S., 488, it was decided that

"The grant of swamp and overflowed lands to the several States by act of September 28, 1850, is one *in præsenti*, passing title to the lands of the character therein described, from its date, and requiring only identification thereof to render such title perfect."

In *Railroad Co.* v. *Railroad Co.*, 139 U. S. 1, it was held that

"The grant of public land to the Northern Pacific Railroad Com-

pany in the act of July 2nd, 1864, 13 Stat. c. 217, p. 365, was a grant *in præsenti*, in the nature of a float until the route should be determined, and, after that, attaching to specific sections, capable of identification, except as to sections which were specifically reserved.

"The force of such grant was in no respect impaired or its construction effected by the provision in section four of that act that patents for the land should be issued, as sections of twenty-five miles of road should be completed; but the company was not at liberty to dispose of its land not patented, without the consent of Congress."

In *Deseret Salt Company* v. *Tarpey*, 142, U. S., 241, it was decided, "That the grant of public land to the Central Pacific Railroad Company by the acts of July 1, 1862, 12, Stat. 489, c. 120, and July 2, 1864, 13, Stat. 556, c. 216, was a grant *in præsenti*; and the legal title to the granted land, as distinguished from merely equitable or inchoate interests, passed when the identification of a granted section became so far complete as to authorize the grantee to take possession."

Under the act of Congress and under the language of the warrant we submit that the children and the widow took equal shares as tenants in common. It might be for our interest to establish that the widow took only a dower interest. But we see no ground for maintaining such a claim. Where a grant runs to several they take equally, as a general rule, and we see nothing to take this grant out of the general rule. Therefore, conceding that Taylor got a good title to the interest of Elizabeth, the widow, an undivided one-sixth, he became by the purchase a tenant in common with the minor children, he owning one-sixth of the warrant, and they, five-sixths.

II.

THE ASSIGNMENT OF THE WARRANT BY THE GUARDIAN WITHOUT AUTHORITY OF COURT WAS VOID AS TO THE MINORS.

The following is a copy of the assignment:

"For value received we, Elizabeth Remsen, widow, for myself and as guardian of the persons and estates of Mary Ann Remsen, John Wesley Remsen, Elizabeth Remsen, and George W. A. Remsen, minor children of George W. Remsen deceased, duly appointed by the Orphans' Court of the city and county of Philadelphia, and Harriet A. Remsen, do hereby sell and assign unto Nathan C. D. Taylor, all our right and title, and all the right and title of the said minor children, to the within certificate or warrant No. 28811, for one hundred and sixty acres.

"Witness our hands this eleventh day of October, 1848, at Philadelphia, in the State of Pennsylvania.

ELIZABETH (her X mark) REMSEN,
"For myself and as guardian of the minor children of George W. Remsen, deceased.
"HARRIET A. REMSEN.

"Attest:
"ISAAC BOILEAU.
"WM. F. SMALL.

"Acknowledged before me this eleventh day of October, 1848, at Philadelphia, in the State of Pennsyluania.

"ISAAC BOILEAU,
"Alderman and Justice of the Peace."

(*a*) *The right of the minors under the warrant was real, and not personal property.*

The federal law must be decisive of this question. By the Act of June 3, 1858, land warrants were made personal property, but prior to that time had been real estate. See opinion of Attorney General Black on this act, 1 Lester's Land Laws, 609, and *Brush* v. *Ware*, 15 Peters, where the Court holds, pages 107 and 112, that the military right *descended* to the heirs. These warrants had always been held by the War Department to be real estate. (1 Lester's Land Laws, p. 592; circular of July 20, 1875, par. 18; 2 Copp's Public Land Laws, 976.) Just as much as a railroad land grant before location.

They are incorporeal hereditaments descendible to heirs *Walker* v. *Daley*, 80 Wis., 227. Just as much real estate as a railroad land grant before location with the Supreme Court has often described as a float. In this case it was decided

"A private land claim having been finished by act of Congress, a person other than the true owners fraudulently procured the certificate of location to be issued to him, and assigned the same, and patents were issued to his assignees, granting the land to them and their legal representatives. In an action by the true owners against grantees of the patentees to have such grantees adjudged trustees for the plaintiffs, it is held a demurrer to the complaint:

(1) The plaintiffs have no adequate remedy at law to recover the land.

(2) The certificate of location being hereditaments, replevin or trover could not have been maintained therefor.

In this case Mr. Justice Winslow says, page 227:

"Whether replevin or trover could be maintained depends upon whether these land claims were chattels. It our opinion they were clearly hereditaments, descendable to heirs; fulfilling Blackstone's

definition of incorporeal hereditaments—"a right issuing out of a thing corporate, whether real or personal." 2. Bl. Commr., 20.

The purpose of the Act of June 3, 1858, was to change the character of land warrants. They had theretofore been treated as real estate. They were thereafter to be treated as personal property. This statute was not intended to thereby validate any prior informal or illegal transfers of an infant's property. Nor is it presumed that any disastrous or inconvenient consequences will flow from the application of different rules of transfer, of warrants issued before and after the year 1858.

The statute of March 22, 1852, sec. 2414, which declare all warrants for military bounty lands assignable, is cited, but it has no bearing upon the case at bar. The warrant in question was already assignable with the consent of the Court and it was perfectly competent for the commissioner of the general land office to prescribe forms and regulations for the assignment of any warrant that had not been assigned. But the purpose of the act was not to validate assignments which had been illegally or fraudulently made.

(b) *Even if the warrant was personal property, the Act of Congress prohibited its assignment by the guardian without express authority from the Orphan's Court.*

Congress attached by law the precedent condition of a probate decree to any sale of a minor's interest. It makes no difference what the nature of that interest is, whether real or personal. Congress might have provided that the warrant should not be assignable at all, or that it could be assigned only on certain conditions. If these conditions were not complied with the sale was void. Even if the warrant was personalty and within the ordinary power of a guardian to sell, that power had been expressly denied by the act of Congress which created the property; and it is perfectly competent for the legislative power to take away from a guardian the right to sell the personal estate, and this is not without precedent, for Congress to forbid alienation.

See Act of 1854, in regard to Sioux half-breed script.

But in the present case there was no such purpose. The only aim was to throw around the interests of an infant the protection of the Courts, and to require the guardian to obtain special authority before the infant's inchoate title to land should be sold. The statute provides that "the guardian (who had already been appointed), *upon*

being duly authorized by the Orphan's Court or other Court, having probate jurisdiction, should have power to sell," etc.

The counsel argues, that inasmuch as the guardian in Pennsylvania has, either by common law or by statute, the power to assign the personal property of his ward, without special authority of the Court, he is "duly authorized" to make the sale when he is appointed guardian. But Congress intends that the authority shall proceed from the Court, not from the law regulating the powers of guardians. The language of the statute is, "the legally constituted guardian * * * shall, *upon being* duly authorized *by the Orphans' Court or other Court* having probate jurisdiction, having power to sell and dispose of such certificate or warrants for the benefit of those interested." Tne purpose is obvious. The intervention of the Court in each particular case will tend to save the infant's estate from improvident or fraudulent bargains. *The authority must come from the Court*, by special order or decree.

The respondents' counsel have cited quite a number of cases in support of the proposition that statutory restrictions of assignability are not favored, and are strictly construed. These cases have no bearing upon the case at bar, for it is not pretended that the assignability of the Remsen land warrant was restricted or forbidden—it was simply regulated. And there is every reason to give a statute, which has for its purpose the protection of the wards of Court, the most liberal construction. It is not to be supposed that in a proper case the Court will withhold its consent, or that it will hesitate to permit the transfer when the sale should be made.

Of course it is not to be considered that Congress intended to legislate upon the status of minors in Pennsylvania particularly. But it did intend to circumscribe the power of guardians everywhere who undertook to deal with the land warrants of minors issued under the Act of February 11, 1847.

The following cases have been cited by the learned counsel for the respondent:

Mullen v. *Wine*, 26 Fed. Rep. 206, decides:

"The right of the children of a deceased soldier to locate and enter eighty acres of public land as an additional homestead under the Act of June 8, 1832, is personal property, and may be sold and assigned to a third party by their guardian."

But the Act of June, 8, 1832, does not require the guardian to obtain authority from the Orphans' Court before selling and disposing of the infant's property.

In *Randon* v. *Barton*, 4 Tex., 289, it appears that this case was a suit for breach of contract in failing to deliver certain land certificates. It decides that a contract for the transfer of land certificates need not be under seal, and that the rule respecting the measure of damages for breach of contract to transfer and deliver land certificates is that which applies to the breach of contract for the sale of chattels.

Graham v. *Henry*, 17 Tex., 167, simply decides that "in the absence of any restriction of the power of a grantee to sell, an incipient title or contingent interest which is susceptible of being ripened into title to lands may be assigned."

In *Cox* v. *Bray*, 28 Texas, 247, it is decided "that the sale of an unlocated Texas land certificate is not within the statute of frauds, and that, at any rate, payment of the purchase money and the subsequent location of the patent, taking possession of the land and improving the same will give the purchaser an equitable title."

In *Hearne* v. *Gellett*, 62 Texas, 25, it is decided that "a land certificate, though personal property when unlocated, loses its character as such after its location, and becomes a chattel real, title to which can no longer pass by parol."

Dodge v. *Litter*, 73, Texas 319, decides that "a purchaser of a land certificate filed in the land office and located upon land which it cannot hold is affected with notice of the facts apparent in the records of the land office in the particular file of which the certificate formed a part, and also of what ordinary investigation upon such facts would develop."

In *Rose* v. *Nevada & Grass Valley Wood & Lumber Co.*, 73, Cal. 385—388, it is decided that "The provisions of chapter 5 of the Revised Statutes of the United States, requiring a homestead claimant of public lands to be an occupant thereof, and restricting his right to alenate the same prior to the issuance of the patent, are not applicable to the additional homesteads allowed to honorably discharged soldiers and sailors, under section 2306 of the Revised Statutes. "In all cases where it has been the intention of Congress to prevent alienation by the beneficiary, such intention has been clearly expressed. Thus the act of Congress of 1854, under which the Sioux half-breed scrip was issued, provided expressly that no transfer or conveyance of the certificate should be valid. *Myers* v. *Croft*, 13 Wall., 291; *Mullen* v. *Wine*, 26 Fed. Rep., 206."

Knight v. *Leary*, 54 Wis, 460, decides that "one who has entered land under the homestead law may alienate it before the issues, in the absence of anything in the statute forbidding such patent alienation; and the patent, when issued to him, will vest the title in his previous grantee by deed of warranty."

In *Townsend* v. *Fenton*, 30 Minn., 528–530, it appears that "F. made a homestead entry under U. S. Rev. St., secs. 2290 and 2291, and made an agreement to convey the land as soon as he should

make final proof of his claim, upon a consideration to be paid at that time: *Held*, that the agreement is not void under the laws of the United States."

The Court says:

"It was an agreement to convey, not before, but after, the patent should issue, and upon a consideration to be received at the time of the conveyance. The plaintiff could not be entitled to a conveyance before the patent should have issued, nor then unless he performed or tendered performance on his part. It would be an abuse of terms to call this, of itself, an alienation. The agreement was, therefore, not void by reason of being prohibited by or contrary to the policy of the statute."

Threadgill v. *Pintard*, 12 How., 24, decides that "where a settler upon the public lands had a pre-emption right to them and sold them to a person who again sold them to a third party, the original vendor has a lien upon the land for the balance of the purchase money still due, and can enforce it by a bill in chancery, notwithstanding the vendee has taken out a patent in his own name under a subsequent pre-emption law."

French v. *Spencer*, 21 How., 228, decides that "land warrants issued under the Act of Congress of 1816, 3d Statute at Large, 256, which were delivered to the owners to be located by them, were therefore assignable after an entry was made in the Land Office."

Maxwell v. *Moore*, 22 How., 185, decides that "where an Act of Congress made void all sales or agreements by the grantee before patent issued under the Act of 1812, and another Act was passed in 1826 permitting the soldier under certain circumstances to surrender his patent and select other lands, but the second Act did not contain the avoiding clause contained in the first Act, an agreement to convey made after the first patent was surrendered, and before the second was issued, was valid and binding."

In *Doe* v. *Wilson*, 23 How., 458, a treaty made with the Pottawamie Indians in 1832, provided for reservations to individual Indians, which should be selected under the direction of the President, "after the land shall have been surveyed, and the boundaries shall correspond with the public surveys." Before this was done one of these reservees made a conveyance by a deed in fee-simple, with a clause of general warranty. In 1837 patents were issued for the reservations. It was held that "this deed vested the title of the reservee in the grantee and that the former was a tenant in common with the United States, and could sell his reserved interest."

Myers v. *Croft*, 13 Wall, 291, simply decides that "under the 12th section of the act of Congress of September, 1841, a pre-emptor who entered the land, and *who at the time is the owner in good faith*, and has done nothing inconsistent with the provisions of the law on the subject, may sell, even though he has not yet obtained a patent; that the disability extends only to the assignment of the pre-emption right."

Lamb v. *Davenport*, 18 Wall, 307, decides "that unless forbidden by some positive law, contracts made by *actual settlers* on the public lands concerning their *possessory* rights, and concerning the title to be acquired in future from the United States, are valid as between the parties to the contract, though there be at the time no act of Congress by which the title may be acquired."

Hussey v. *Smith*, 99 U. S., 20, decides "that under certain circumstances, the interest of a person who was in possession of a lot before it was entered, and mortgaged it to another person, but thereafter remained in possession, could under the act of March 2nd, 1867, be the subject of a sale or a mortgage."

Stringfellow v. *Cain*, 99 U. S., 610, decides that "where, under the act of March 2nd, 1897, the Mayor of Salt Lake City, on Nov. 4th, 1871, duly entered lands occupied as the site of the city, and received a patent therefor, in trust for the occupants thereof, and the Legislature of the territory prescribed rules for the execution of such trust, an occupant of a lot could sell and convey his possessory rights therein before the land was entered."

Webster v. *Luther*, 50 Minn., 77, 163 U. S. 331, decides "that a per, son entitled under the Revised Statutes, 2304, to enter a homestead, in case an entry is made for less than 160 acres, may, under section 2306, make an additional entry of the deficiency, which right is not personal, but is transferable and assignable."

None of these cases decide that when Congress has prescribed that a guardian must obtain the authority of the Court, which appointed him, to sell an infant's land warrant, he may disregard the injunction of the law, and alien the rights of his ward, according to his own irresponsible discretion.

III.

THE ASSIGNMENT OF A LAND WARRANT BY A FEME COVERT WHO IS A MINOR IS VOID. IF EXECUTED IN IGNORANCE SHE IS NOT CALLED UPON TO DISAFFIRM THE ACT BEFORE SHE IS INFORMED OF ITS CHARACTER.

It is true that an infant's contracts are voidable, and that within a reasonable time after coming of age he must disaffirm the contract made during infancy. But if the infant, not knowing how to read or write, signed the contract in ignorance of its contents, and under the supposition that it was a receipt, he is not bound to disaffirm before he knows what he has done.

Harriet A. Heyer was at the time of the execution of the assignment of the land warrant, seventeen years old, and the wife of Jacob Heyer. She could neither read nor write. The instrument was not

read or explained to her. She understood that she was signing some receipt or formal paper. She received no money. See pages 39, 40, 42, 43, 49, 50, 94, 96, 97, 99, 107, 108, 110–114, 115, 146, 147, of the printed record.

In *Goodnow* v. *Empire Lumber Co.*, 31 Minn., 468, 472, it is decided "that a minor who executes a conveyance of real estate must disaffirm it within a reasonable time after he comes of age, or be barred of his right to do so. Where there is mere delay to disaffirm after coming of age, *and there is nothing to explain or excuse it, or show its necessity*, whether the delay is for more than a reasonable time is a question for the Court. A delay of three years, and a half, *unexplained*, is unreasonable. The rule holding certain contracts of an infant voidable, (among them his conveyances of real estate), and giving him the right to affirm or disaffirm after he arrives at majority, is for the protection of minors, and so that they shall not be prejudiced by acts done or obligations incurred at a time when they are not capable of determining what is for their interest to do."

This has no application to the action of the guardian. The minor is under no obligation to disaffirm for contracts made by a guardian in excess of his power. *Cox* v. *Manvel* (Minn.) 52 N. W. Rep., 273.

Contracts of the infant, in general, are *voidable;* contracts of a guardian for sale of property beyond his authority are VOID.

There was therefore no duty encumbent upon the children of George W. Remsen to disaffirm the act of their guardian when they attained their majority, but they could not do so in utter ignorance of such act.

IV.

THE IMPROVIDENT ISSUE OF THE PATENT IN THE ABSENCE OF THE COMPLAINANTS DID NOT DIVEST THEM OF THEIR RIGHTS.

The issue of the patent was *ex parte* and without notice to the infants who were interested in it. The assignee of the land warrant, to whom the patent was issued, was fixed with the knowledge of the fact that the assignment to him was invalid and the issue of the patent to him unlawful. He, therefore, took the title as trustee for the rightful claimants. The issue of the patent by the department to the wrong person was a ministerial act. It did not prevent a court of equity from inquiring into the matter and correcting the mistake by declaring the patentee a trustee.

"Where several parties set up conflicting claims to property, with which a special tribunal may deal, as between one party and the

Government, regardless of the rights of others, the latter may come into the courts and litigate the conflicting claims." *Garland* v. *Wynn*, 20 How., 6; *Comegys* v. *Vasse*, 1 Pet., 193; *Berthold* v. *McDonald*, 22 How., 6.

"Where a proceeding to set aside an entry for land was *ex parte* and without notice, a court of equity may inquire into the proceedings and afford relief." *Lindsey* v. *Hawes*, 2 Black, 554.

"The interpretation placed upon public land acts by the Secretary of the Interior is not binding upon the courts." *United States* v. *Murphy*, 32 F., 376; *Same* v. *Mann*, *Id.*, 386.

"Where the Secretary of the Interior, acting upon known facts, draws therefrom an erroneous conclusion of law, and in pursuance thereof issues a patent to a party not entitled thereto, his action is not conclusive, but is subject to review by the courts." *Southern Pac. Ry. Co.* v. *Wiggs*, 43 Fed. Rep., 333.

"The practice or opinion of the officers of the Land Department cannot control the action or the opinion of this court in expounding the law with reference to the rights of parties litigant before them." *Irvine* v. *Marshall*, 20 How., 558.

"But in issuing the patent to Dixon, as the assignee of Caldwell, the department acted ministerially, not judicially, and did not therefore, by its action, conclude Caldwell's rights, whatever they were." *Brush* v. *Ware*. 15 Pet., 107.

"A patent issued on such a warrant, appropriates the land, but leaves all equities between assignor and assignee open." *Brush* v. *Ware*, 15 Peters, 107, 108; *Bolden et ux.* v. *Massie's heirs et al.*, 5 Cond. Reg., 256; Ohio St. Rep., 459, note.

The learned counsel for the respondent has cited several cases to sustain the position "that whether the Orphans' Court had authorized the guardian to sell and assign this warrant, is a question of fact, which was to be, and was considered by the Department of the Interior in issuing the patent, and that the determination of the Department upon this question is conclusive, under the circumstances of this case."

In *Johnson* v. *Towsley*, 13 Wall, 72, it was decided that

"The general proposition is recognized that when a special tribunal is authorized to hear and determine certain matters arising in the course of its duties, its decision within the scope of its authority are conclusive. Under this principle the action of the Land Department in issuing a patent is conclusive in all courts and in all proceedings where by the rules of law the legal title must prevail. But the courts of equity, both in England and in this country, have always had the power in certain classes of cases to inquire into and correct injustice and wrong, in both judicial and executive action founded in fraud, mistake, or other special ground of equity, when private rights are invaded."

In this case, Mr. Justice Miller said, just after what is quoted by respondent's counsel:

"But we are not prepared to concede, that when, in the application of the facts as found by them, they, by misconstruction of the law, take from a party that to which he has acquired a legal right under the sanction of those laws, the courts are without power to give any relief." "On the other hand, it has constantly asserted the right of the proper courts to enquire, after the title had passed from the government, and the question became one of private right, whether, according to the established rules of equity, and the acts of Congress concerning the public lands, the party holding that title should hold absolutely as his own, or as trustee for another."

The land office acted in this case after hearing both sides.

In *Shepley* v. *Cowan*, 91 U. S., 330, it was decided that

Where a party has settled upon public land with a view to acquire a right of pre emption, the land being open to settlement, his right thus initiated is not prejudiced by a refusal of the local land-officers to receive his proofs of settlement, upon an erroneous opinion that the land is reserved from sale. The rulings of the Land Department on disputed questions of fact, made in a contested case as to the settlement and improvements of a pre-emption claimant, are not open to review by the courts when collaterally assailed."

It will be observed that the Land Department decided after hearing both sides.

Moore v. *Robbins*, 90 U. S. 530, decides that

"The decision of the Secretary of the Interior, against a purchaser at the public sales, in favor of a pre-emption claimant who had failed to make the required proof and payment, was erroneous, is a misconception of the law, and the equitable title should be decreed to belong to the purchaser. But when fraud or mistake or misconstruction of the law of the case exists, the United States, or any contesting claimant for the land, may have relief in a court of equity."

In this case, Mr. Justice Miller said:

"While conceding for the present to the fullest extent that when there is a question of *contested* right between private parties to receive from the United States a patent for any part of the public land, it belongs to the head of the Land Department to decide that question, it is equally clear that when the patent has been awarded to one of the contestants, and has been issued, delivered, and accepted, all right to control the title or to decide on the right to the title, has passed from the land office."

In *Quinby v. Conlan*, 104 U. S., 420, it is dicided, that where by misconstruing the law, those officers have withheld from a party his just rights, or misrepresentation and fraud have been practiced necessarily affecting their judgment, the courts may in a proper proceeding interfere and refuse to give effect to their action.

In *Smelting Company* v. *Kemp*, 104 U. S., 636, it was decided that

"If in the issuing of a patent the officers of that department take mistaken views of the law, or draw erroneous conclusions from the evidence, or act from either imperfect views of duty or corrupt motives, the party aggrieved cannot set up such matters in a court of law to defeat the patent. He must resort to a court of equity, where he can obtain relief, if his rights are injuriously affected by the existence of the patent, and he possesses such equities as will control the legal title vested in the patentee."

The department evidently took a mistaken view of the law in holding that an order or decree of the Orphans' Court was not necessary to pass the title of the minor children of the soldier, or else it drew an erroneous conclusion from the evidence. In either case, the minors who have never had a day in court may now be righted in a court of equity.

In *Steel* v. *Smelting Company*, 106 U. S., 447, it is decided that "A patent executed in the required form and by the proper officers, for such a portion of the public domain as is by law subject to sale or other disposal, passes the title thereto, and the finding of the facts of the Land Department which authorize its issue, is conclusive in a court of law. (*Smelting Co.* v. *Kemp*. 104 U. S., 636, cited upon this point and approved.) A party who claims to be aggrieved by such issue, although he cannot have the patent vacated or limited in its operation where it comes collaterally in question in an action for the recovery of possession, may obtain relief in a Court of Chancery, if he has such an equitable right as will estop the patentee or those claiming under him from asserting the legal title to the land. Otherwise such party must apply to the officers of the government, who, although not clothed with power to set the patent aside, may for that purpose bring suit in the name of the United States."

Lee v. *Johnson*, 116 U. S., 48, was a case in which Lee complained to the Land Office that Johnson had abandoned the land for more than six months, and a *contest* took place between them as to the right to the land. The usual proceedings were had before the Register, and the Commissioners decided in favor of Johnson. This was a contested case. In this case it was decided that

"If the officers of the Land Department mistake the law applicable to the facts or misconstrue the statutes and issue a patent to one not entitled to it, the party wronged can resort to a court of equity to correct the mistake and compel the transfer of the legal title to him as the true owner. The Court in such a case merely directs that to be done which those officers would have done if no error of law had been committed."

In Monroe Cattle Co. *v.* Becker, 147 U. S., 47, at 56, Mr. Justice Brown says:

"Defendant is positive that the subsequent issuing of a patent put an end to the equitable rights of the appellant, cannot be sustained,

either under the decisions of this court, or that of the Supreme Court of Texas. In the case of *Garland* v. *Wynn*, 20 How., 6, 8, the general rule was stated to be "that where several parties set up conflicting claims to property, with which a special tribunal may deal, as between one party and the government, regardless of the rights of others, the latter may come into the ordinary courts of justice, and litigate their conflicting claims. To the same effect are *Cunningham* v. *Ashley*, 14 How., 377; *Lytle* v. *Arkansas*, 22 How., 193, 203; *Betthold* v. *McDonald*, 22 How., 334; *Lindsey* v. *Hawes*, 2 Black, 554; *Shepley* v. *Cowan*, 91 U. S., 330; *Bohall* v. *Dilla*, 114 U. S., 47; *Sturr* v. *Beck*, 133 U. S., 541, 550. In the case of *Stark* v. *Starrs*, 6 Wall., 402, 419, these cases are said to be only applications of well established doctrine, that where one party has acquired the legal title to party, to which another has a better right, a court of equity will convert him into a trustee of the true owner, and compel him to convey the legal title. And in *Silver* v. *Cadd*, 7 Wall., 212, it was held that the proper retief was not the annullment and cancellation of the patent wrongfully issued, but was one founded upon the theory that the title which had passed from the United States to the defendant enured in equity to the benefit of the plaintiff, and that the decree should compel him to convey to the plaintiff or to have such conveyance made in his name by a commissioner appointed for the court for that purpose. See also, *Johnson* v. *Towsley*, 13 Wall., 72. It seems that this is also the law of Texas; *Todd* v. *Fisher*, 26 Tex., 239; *Mitchell* v. *Bass*, 26 Tex., 376; *League* v. *Rogan*, 59 Tex., 427; *Sherwood* v. *Fleming*, 25 Tex., 408, 427; *Wright* v. *Hawkins*, 28 Tex., 452."

V.

THE ISSUE OF THE PATENT RAISED NO PRESUMPTION CONTRARY TO THE RECORD AND THE TRUTH THAT THE ASSIGNMENT HAD BEEN AUTHORIZED BY THE ORPHANS COURT.

The testimony in this case makes it very certain that no special order was made by the Orphans Court authorizing the guardian to assign the warrant.

Alfred J. Fortin testified that he has made a very thorough examination of the index and the docket and that he can find no trace of such an order. That there is always a docket entry of such an order and that the same is indexed.

Besides, the fact that the land warrant itself does not recite such an order is the strongest negative evidence of its non-existence.

Thayer, Judge, in delivering the opinion of the circuit court of appeals in this case, says:

"But she (the guardian of the minor children) appeared to have obtained no order from the orphan's court aforesaid authorizing her to sell her children's interest therein" (in the land warrant).

If the plaintiffs have not been guilty of such laches as to bar their claim, the Court will not find a falsehood in order to defeat it.

The learned counsel argue that the officers of the Department of the Interior must have passed upon the fact and found that the order was made *because it was necessary* to be found. We submit that the court will not do violence to the facts in order to sustain the decision of the officers of the Department of the Interior. Else, in no case could a court of equity correct their errors.

The counsel cite a number of authorities upon the subject of presumption in support of titles, but in none of them are the presumptions declared to be *conclusive*, on the contrary in every case they may be repelled, as has been done in this case.

If a conclusive presumption has been raised that the infants' rights have been duly assigned, then they have been deprived of their property without due process of law. They have lost without a hearing. They are concluded without a day in court. Will a court of equity sanction such an iniquity?

VI.

BY THE ASSIGNMENT OF THE WARRANT AND THE SUBSEQUENT ISSUANCE OF THE PATENT TO TAYLOR A CONSTRUCTIVE TRUST WAS CREATED THROUGH A CONSTRUCTIVE FRAUD.

George W. Remsen having died, his widow, for herself and her minor children, made application to the Government for the land warrant, to which they were entitled in pursuance of the act of Congress. It was duly issued to them on the 30th day of February, A. D. 1848. The widow at the same time made application to the Government for a pension on account of the death of said decedent in the Mexican War. The application to the Government for the land warrant was made through an attorney, who received it, and before its delivery had made arrangement for its sale. As her counsel he presented a petition to the Orphans' Court of Philadelphia County for her appointment as guardian of the minor children of said decedent, all of whom were under fourteen years of age, except Harriet A., who, at that time, was under seventeen years of age and was married to one Jacob Heyer. On Oct. 6, 1848, said widow was appointed guardian of said minor children. The petition for her appointment as guardian contained an affidavit by the attorney that

the property likely to come into her hands as guardian would not exceed $100. The petition did not disclose the interest of the minors in the grant made to them, as evidenced by the land warrant, and no security was required by the said Orphans' Court of said guardian. Thereupon the said widow, on October 11, 1848, went before a magistrate or Justice of the Peace, and made her mark, to what purports to be an assignment of all her right, title and interest and all the right, title and interest of the said minor children in said land warrant, to one Nathan C. D. Taylor, for which she received $100, less counsel fees and expenses.

It appears from the testimony that, at the time of making her mark on said assignment, as her signature thereto, as guardian of said minor children as well as individually, she could neither read nor write, and that the contents thereof were not made known to her, although she thought it was for back pay or other moneys due her for the decedent's service in the Mexican War.

The assignment also purports to be signed by Harriet A. Remsen, the eldest child, although at that iime she was a *feme covert* under seventeen years of age. She could neither read nor write, and she never knew of the issuance of the land warrant or the assignment of the same.

In pursuance of this alleged assignment, the said Taylor, on the thirty first day of October, A. D. 1849, deposited the said land warrant in the land office at Stillwater, Minnesota, and did there elect to locate the same on the land in suit, in satisfaction of the same, as assignee of said widow in her own right and as guardian of said minor children, and on the twentieth day of March, 1850, a patent was granted by the government in satisfaction and cancellation of said land warrant and the location thereunder, which patent recited that the land was granted to said Taylor as assignee of said widow in her own right *and as guardian of the minor children of said decedent;* and on the twenty-eighth day of January, A. D. 1852, said patent was duly recorded in Ramsey County, in the State of Minnesota, in Book C of Deeds, page 288.

The sale could have been authorized by the Orphans' Court only upon a petition setting up the necessity of the sale, and a description of the minors' interests in the land to be sold, and if fraud had been attempted in a misleading petition as to the necessity of the sale or the character of the property or its value, the sale would not have been ordered, or it would not have been confirmed, and no title would have passed thereunder. The only peti-

tion presented to the Orphans' Court was the one for the appointment of the guardian, which fraudulently concealed its real object. Its purpose was to divest the minors' interest by a sale to the intending purchaser, who was cognizant of the illegality of the transaction.

When the vendee Taylor located this warrant and surrendered it for land, taking the patent in his own name (which occurred on March 20, 1850), the rightful owners had the right to adopt his location and surrender of the warrant and charge him as trustee of the land. This is on the theory of a constructive fraud, for it would be a fraud for him to retain the property of the rightful owner or the proceeds of that property. This is the plain principle which has been affirmed and acted on in the Supreme Court in numerous instances for over eighty years.

Massie v. *Watts*, 6 Cranch., 148, was a case of location by an agent. But the case of *Brush* v. *Ware*, 15 Peters, 93, is on all fours with this and cannot be distinguished. In that case Hockaday became entitled, for military service, to warrants for four thousand acres of land, and died leaving a will. Ware, his executor, sold the right of Hockaday to one Ladd for $40 and a pair of boots. The certificate of the executive counsel of Virginia which preceded the land warrants ran to the "representative of John Hockaday." The warrants ran to "Joseph Ladd, assignee of Robert S. Ware, executor of John Hockaday, deceased." Assignees of Ladd obtained patents. The suit was by the heirs of Hockaday. It was held that the executor had no authority to sell because it was real estate, and that the heirs were not concluded or effected by the issue of the patent, but *might charge the patentee as a trustee of the land and compel him to convey.*

In *Stark* v. *Starr*, 6 Wall, 419, this is said to be only an application of the well established doctrine that where one party has acquired the legal title to property to which another has a better right, a court of equity will convert him into a trustee for the true owner and compel him to convey a legal title.

In *Silver* v. *Ladd*, 7 Wall, 228, it was held that the proper form of relief was not the cancellation of the patent which passed the title out of the Government. This could not be done without revesting title in the United States and without the Government being a party, the true theory being that the title passed by the patent and inured in equity to plaintiff if he had a right superior to the patentee. See *Johnson* v. *Towsley*, 13 Wall, 72.

In *Meader* v. *Norton*, 11 Wall, 442, the patent was issued on a fabricated grant, the genuine grant having been destroyed. The Court held that the legal title went by the patent to the patentee; that the remedy was to charge the legal owner as trustee for the true owner and compel him to convey accordingly, saying, page 458:

"Persons claiming to hold the land against the patent cannot have relief in a suit at law, but courts of equity have full jurisdiction to relief against fraud or mistake, and that power plainly extends to cases where one man has procured the patent which belonged to another at the time the patent was issued."

So in *Widdicombe* v. *Childers*, 124 U. S., 400, Chief Justice Waite said: "Widdicombe, being a purchaser with full knowledge of their rights, was in law a purchaser in bad faith and, as their equities were superior to his, they were enforceable against him, even though he had secured a patent vesting the legal title in himself. Under such circumstances, a court of chancery can charge him as trustee and compel a conveyance which shall convert the superior equity into a paramount legal title. The cases to this effect are many and uniform. The holder of a legal title in bad faith must always yield to a superior equity. As against the United States his title may be good, but not as against one who had acquired a prior right from the United States in force when his purchase was made under which his patent issued. The patent vested him with the legal title, but it did not determine the equitable relations between him and third persons."

Felix v. *Patrick*, 145 U. S., 317, is a case where it is alleged that the script with which the land had been located had been fraudulently obtained by Patrick from Sophia Felix, an Indian. The law is carefully considered, the authorities cited and approved, including *Brush* v. *Ware*, and the law held to be that Sophia Felix could charge Patrick as trustee for the land and compel a conveyance. On the second point the Court held the plaintiff guilty of laches, and she was beaten on that ground. After thus fully disposing of the case, the Judge writing the opinion voices the only discordant note in the whole list of cases from 1810 down. He says what was clearly *obiter* and directly opposed to the first part of the decision, that justice only requires what the law would demand, repayment of the value of the scrip with legal interest. This was not only *obiter*, but clearly, we think, not the law, and is supported by no authority.

In the case of *Monroe Cattle Co.* v. *Becker*, 147 U. S., 47, the authorities are again reviewed and the rule we state referred to as well established doctrine.

In *Bernier* v. *Bernier*, 147 U. S., 242, it was held that where a patent for land is issued by mistake, inadvertence, or other cause, to parties not entitled to it, they will be declared trustees of the true owner, and decreed to convey the title to him.

The case of *Stoddard* v. *Smith*, 11 Ohio St., 581, is a case where a guardian made an unlawful sale of the interest of minors in land scrip. The Court charged the patentee as trustee of the land and compelled a conveyance, saying:

"Nor is it necessary to rest this case upon the character of the land certificates used in the purchase of the land. If instead of land scrip it had been bills of exchange, or other negotiable securities, or money held by Lowry belonging to these plaintiffs, and the same had been used by him, or by himself and associates, having notice of the fact, in the purchase of the lands, and payment of the purchase-money thereby made, the title being conveyed to the purchasers, or either of them, as in this case, a resulting trust would necessarily have arisen in favor of the parties whose funds had been so invested. And the plaintiffs would in such case have had their option, either to recover the value of the fund in money, or to enforce the trust in the lands. The case would still be one of that class of cases in which, it is said, a court of equity may act by creating a trust *in invitum*. Indeed, it may be regarded as a general rule, that in all cases where a party purchases trust property, knowing it to be such, from a trustee, courts of equity, when called upon, will force the trust upon the conscience of the delinquent intruder upon the trust, and compel him to perform it, and to hold the property subject to the trust, in the same manner that it was before held by the trustee."

The distinction between a constructive trust which originates in fraud, actual or constructive, and an implied trust which originates in contract, is clearly pointed out in the text writers.

Mr. Perry says in his work on Trusts, ch. 6, sec. 166:

"The trusts thus far considered arise from the express agreements and intentions of the parties, or from their intentions implied from their agreements. These trusts arise, result or are implied from the contracts and relations of the parties. The intention of the parties as manifested in contracts made in good faith is the foundation of them. There is another large class of trusts which arise from frauds committed by one party upon another. Such trusts are called constructive trusts. They differ from other trusts in that they are not within the intention or contemplation of the parties at the time the contract is made from which they are construed by the Court, but they are thrust upon a party contrary to his intention and against his consent."

These trusts which originate in actual or constructive fraud, are so designated merely to indicate the nature and extent of the relief which will be granted, and not as indicating the nature of the action founded thereon. The action on behalf of the beneficiary is founded on fraud, actual or constructive, and not on any contract relations between the parties. Thus, on sec. 166, Mr. Perry, in his work on Trusts, further says:

"When it is said that the person who fraudulently receives or possesses himself of trust property, or who has defrauded another of his estate by misrepresentation, concealment or other fraudulent practices, is converted by the Court into a trustee and ordered to account

for or reconvey the property, the expression is used for the purpose of describing the nature and extent of the remedy against him, and it denotes that the party defrauded or beneficially entitled, have the same rights and remedies against him as they would be entitled to against an express trustee who had fraudulently committed a breach of the trust. Generally speaking the constructive trust described in this chapter are not trusts at all in the strict and proper signification of the word "trusts"; but as courts are agreed in administering the same remedy in a certain class of frauds as are administered in a certain breach of trust, and as courts and the profession have concurred in calling such frauds constructive trusts, there can be no misapprehension in continuing the same phraseology, while a change might lead to confusion and misunderstanding."

Mr. Pomeroy says, Pomeroy's Eq. Juris., section 1044:

"The existence of the trust in all cases of this class might be referred to constructive fraud. This notion of fraud enters into the conception in all its possible degrees. Certain species of the constructive trusts arise from actual fraud; many others spring from the violation of some positive fiduciary obligation; in all the remaining instances there is, latent, perhaps, but none the less real, the necessary element of that unconscientious conduct which equity calls constructive fraud."

And section 1048:

"Equity impresses the trust upon the property in the hands of the transferee or the purchaser, compels him to perform the trust if it be active, and to hold the property subject to the trust, and renders him liable to all the remedies which may be proper for enforcing the rights of the beneficiary. It is not necessary that such transferee or purchaser should be guilty of positive fraud, or should actually intend a violation of the trust obligation; it is sufficient that he acquires property upon which a trust is in fact impressed, and that he is not a *bona fide* purchaser for a valuable consideration and without notice."

Mr. Smith, in his Principles of Equity on page 84, says:

"When on the ground of justice and good conscience, without reference to the intentions of the parties, equity considers the holders of the legal estate to be not entitled to enjoy the equitable or beneficial interest, it treats him as trustee. Trusts thus created are called constructive trusts."

Such has also been the holding of the Supreme Court of Minnesota, and these decisions have been approved by the Supreme Court of the United States in a case from Minnesota.

In *Cook* v. *Van Etten*, 130 U. S., 648, the plaintiff sent to the defendant money to be loaned for the plaintiff; the defendant, without any intent to defraud the plaintiff, loaned the money with other money in his own name. It was agreed between the parties that the defendant should retain all over 20 per cent per annum as his compensation. The plaintiff did not discover until within six years before the commencement of the action that the defendant had

loaned the money in his own name; hence the Court held that the basis of the action was constructive fraud and within subdivision 6, of section 6, ch. 66 of General Statutes of Minnesota, *infra.*

The Court said: "While the defendant may not thus have intended, and we suppose did not intend, to perpetrate a positive fraud upon the plaintiff, nevertheless it was, in the eye of the law, a fraud, being a secret and intentional violation of the private confidence reposed in him. "Judge Story says: 'Fraud, indeed, in the sense of a court of equity, properly includes all acts, omissions and concealments, which involve a breach of legal or equitable duty, trust or confidence, justly reposed, and are injurious to another.' 1 Story Eq., sec. 187; *Gale* v. *Bale*, 19 Barb., 257. In section 307, 1 Story's Eq., the author says: 'The second head of constructive frauds includes those which arise from some peculiar confidential or fiduciary relation between the parties. In this class of cases there is often to be found some intermixture of deceit, imposition, overreaching, unconscionable advantage, or other mark of direct and positive fraud. But the principle, on which courts of equity act in regard thereto, stands, independent of any such ingredients, upon a motive of general public policy. These Courts will, therefore, often interfere in such cases, where, but for a peculiar relation, they would either abstain wholly from granting relief, or would grant it in a very modified and abstemious manner.' See also ib., sec. 322." "The facts alleged in the complaint, and found by the referee, show that the defendants acts in the premises were fraudulent in the eye of the law."

Mr. Pomeroy says again, at sec. 155:

"All instances of constructive trusts may be referred to what equity denominates fraud, either actual or constructive, including acts or omissions in violation of fiduciary obligations. If one party obtains the legal title to the property, not only by fraud, or by violation of confidence, or of fiduciary relations, but in any other unconscientious manner, so that he cannot equitably retain the property which really belongs to another; equity carries out its theory of a double ownership—equitable and legal, by impressing a constructive trust upon the property in favor of the one who is in good conscience entitled to it, and who is considered in equity as the beneficial owner."

Mr. Lewin says—Lewin on Trusts, ch. 8, sec. 2—defining implied trusts:

"Wherever a person, having a power of disposition over property manifests any intention with respect to it in favor of another, the court, where there is sufficient consideration, or in a will where consideration is implied, will execute that intention through the medium of a trust, however informal the language in which it happens to be expressed."

In ch. 10, subd. 1, defining constructive trusts, Mr. Levin says:

"A constructive trust is raised by a court of equity wherever a person, clothed with fiduciary character, gains some personal advantage by availing himself of his situation as trustee; for as it is im-

possible that a trustee should be allowed to make a profit by his office, it follows that so soon as the advantage in question is shown to have been acquired through the medium of a trust, the trustee, however good a legal title he may have, will be decreed in equity to hold for the benefit of his *cestui que trust*."

And, in a note to this subdivision, it is said: "Constructive trusts constitute a most important part of the machinery made use of by courts of equity in administering justice. They arise out of fraud, actual or constructive, and are called into being in order to obviate its effects, and by no real presumed intention of the parties to them. In this they differ from other trusts."

Until the issuance of the patent, the assignment of the land warrant, and entry thereunder upon the land in question, conveyed only an equitable interest; the issuance of the patent, however, to Taylor vested in him the legal estate; but this did not bar the prior equities of the minor children, as to them he was their trustee as well as co-tenant.

Massie *v.* Watts, 6 Cranch, 148.
Irvine *v.* Marshall, 20 How., 558.
Brush *v.* Ware, 15 Pet., 108.
Stark *v.* Starrs, 6 Wall., 402, 419.
Neader *v.* Norton, 11 Wall., 442, 458.
Widdicombe *v.* Childers, 124 U. S., 400, 405.
Felix *v.* Patrick, 145 U. S., 328.

Mr. Justice Brown after quoting the above authorities in his discision in *Felix* v. *Patrick*, *supra*, says:

"The substance of these authorities is that, whenever a person obtains the legal title to lands by any artificial concealment or by making use of facilities intended for the benefit of another, a Court of Equity will impress upon the lands so held by him a trust in favor of the party who is justly entitled to them, and will order the trust executed by decreeing their conveyance to the party in whose favor the trust was created * * * * * * and the *cestui que trust* is at liberty upon discovering the trust to affirm, and enforce its execution."

In general, whenever the legal title to property, real or personal, has been obtained through actual fraud, misrepresentation, concealment or through undue influence, taking advantage of one's weakness or necessities or through any similar means or any other similar circumstances which render it unconscientious for the holder of the legal title to retain and enjoy the beneficial interest equity empresses an constructive trust on the property thus acquired.

2 Pom. Eq. Jur., sec. 1053.
Story, Eq. Jur., sec. 1265.

Bispham, Eq., sec. 91.
Perry, Tr., sec. 166.
Small v. *Attwood*, Younge, 507.
Importers and Traders Nat. Bank v. *Peters*, 123 N. Y., 272.

"A certificate of entry or location under a military land warrant vests in the holder an equitable title to the land and gives him a right to the patent when issued; and if he conveys the land or assigns the certificate, and afterwards obtains a patent, he becomes under the statute (sec. 2414), as well as upon plainest principles of equity, a trustee for the person to whom he had or his assignee. *Gray* v. *Jones*, 14 Fed. Rep., 83; *Key* v. *Jennings*, 66 Mo., 356; *Wirth* v. *Branson*, 98 U. S., 118; *Stinson* v. *Geer*, 42 Kan., 520."

19 Am. & Eng. Enc. of Law, 330.

If anything is needed to make this proposition clearer it is that Taylor was not wholly or absolutely an unlawful holder of this scrip. He was tenant in common with the minor heirs. He was placed in a special relation of trust and confidence with respect to the subject of his purchase and could not retain it for his own benefit, but was bound to hold it in trust. This rule extends to joint and common tenants.

Nesbit v. *Tredennick*, 1 Ball. & B., 46.
Van Epps v. *Van Epps*, 9 Paige, 237.
Tanner v. *Elworthy*, 4 Beav., 487.

VII.

THE SUCCESSIVE GRANTEES OF TAYLOR WERE FIXED WITH CONSTRUCTIVE NOTICE OF ALL, THAT THE RECORDS IN WASHINGTON AND IN MINNESOTA CONTAINED RELATIVE TO THE TITLE OF THE LAND, INCLUDING THE GUARDIAN'S WANT OF AUTHORITY.

In this suit the question as to whether the defendants, who acquire their titles under the patent to Taylor, are chargeable with notice of the trust and co-tenancy is too plain to admit of any doubt.

The doctrine of notice has been considered applicable to these military titles as in other cases.

The entry on the books at the Land Office at Stillwater, Minnesota, a short distance from the *locus in quo*, was the incipient step in the acquisition of this title. The entry only could be made by the filing of the warrant or certified copy thereof in this office when a location of the land is made, which is returned to the General Land Office at Washington, D. C., together with the original land warrant, when

a patent is issued to the person apparently entitled to it. The officers of the land department acting only ministerially in the matter.

The patent therefor conveys the legal title, leaving prior equities open to investigation.

The defendants deny that they ever saw the warrant. Pusey alone, Tatum's grantor, affirms that he knew it was located with a warrant, but did not examine it or cause it to be examined. But the question is, not whether they did see the warrant and the patent, but whether they were not bound to see it. They were bound to examine into their muniments of title, and their failure to do so is such negligence as will afford them no protection in a court of equity.

The statements in the warrant were copied into the patent under which the defendants deduce their title, which recited that the right originally belonged to Remsen and had descended to his widow and minor children and had been assigned by their guardian, the said widow—the warrant and the patent thereupon showed the defendants that this right which pertained to realty had been assigned by their guardian without any recital therein, that said guardian had "been duly authorized by the Orphans' or other Court having probate jurisdiction and having power to sell or dispose of such certificate or warrant for the benefit of those interested," as provided for by the Act of Congress of February 11, 1847. (9th U. S., at L., page 125.)

Was not this notice?

How can these defendants claim as innocent purchasers under such circumstances? (*Brush* v. *Ware*, 15 Peters, 111.) For wherever upon the face of the title papers, the purchaser has full means of acquiring complete knowledge of the title, from the references therein made, he will be deemed to have constructive notice thereof.

Oliver v. *Piatt*, 3 Howard, 333.
Cowell v. *Spring Co.*, 100 U. S., 58.
Ins. Co. v. *Eldredge*, 102 U. S., 547.
Sanford v. *Sanford*, 139 U. S., 642.

"The general proposition of law concerning constructive notice is, that if facts are brought to the knowledge of a party which would put him, as a man of common sagacity, upon inquiry; and if he fail to do so, or to do so properly, whether fraudulently or only negligently, he will be chargeable with notice of what he might have learned upon reasonable examination. *Warren* v. *Swett*, 31 N. H., 332; *Cambridge Bank* v, *Delano*, 48 N. Y., 326; *Acer* v. *Wescott*, 46 N. Y., 384; *Willis* v. *Valletto*, 4 Met. (Ky.), 186; *Russell* v. *Ranson*, 70 Ill., 167; *Watt* v. *Scofield*, *Ib.*, 201; *Dickey* v. *Lyon*, 19 Iowa, 544; *Wood-*

worth v. *Paige*, 5 Ohio St., 70; *James* v. *Drake*, 3 Sneed, 540; *Colquitt* v. *Thomas*, 8 Ga., 258; *Martell* v. *Somers*, 26 Texas, 551; *Jones* v. *Smith*, 1 How., 43; *Kennedy* v. *Green*, 3 Mylne & K., 699, 718."

1 Biglow on Frauds, 386.

"According to our laws a purchaser (It seems that the registry is not notice to all the world, but only to those who are bound to make search. *Maul* v. *Rider*, 59 Penn. St., 167) is constructively affected by the registration of a deed required to be put on record with such knowledge as the index entries afford, and, if they are such as necessarily put a cautious and prudent man upon inquiry, such inquiry will be considered to have been made, and knowledge fixed accordingly. *Bostwick* v. *Powers*, 12 Iowa, 456; *Doyle* v. *Teas*, 4 Scam, 202. But this is not the extent of the rule concerning notice by registration, as held by some of our courts. The doctrine has been carried so far as to require a purchaser to take notice of that of which he can in fact have no knowledge from the books of registration, except by examining every recorded instrument therein. Thus it has been decided that the registration of a deed required to be recorded constitutes notice to subsequent purchasers, though the record of the instrument be not indexed. *Mutual Life Ins. Co.* v. *Dake*, 4 Cent., L. J., 340; *Curtis* v. *Lyman*, 24 Vt., 338; *Bishop* v. *Sneider*,, 46 Mo., 472. See also *Schette* v. *Stein*, 76 Penn. St., 398; *Chatham* v. *Bradford*, 50 Ga., 327, and other cases cited in the Central Law Journal, *et supra*.

1 Biglow on Fraud, 400.

"It may be stated, then, as a rule applicable to all the States, that where an instrument by which the title to real estate if effected is properly recorded, the record thereof is constructive notice to subsequent purchases or encumbrances under the same grantor. *Cushing* v. *Ayr*, 25 Me., 383; *Mason* v. *Martin*, 4 Md., 124; *Vaughan* v. *Greer*, 38 Texas, 530; *Mayo* v. *Cartright*, 30 Ark., 407; *Randolph* v. *West. L. R. R. Co.*, 28 N. J., Eq. 49."

Wade on Law of Notice, 54.

"In America the doctrine has been settled, and it is uniformly held that the registration of a conveyance operates as constructive notice to all subsequent purchasers of any estate legal or equitable in the same property. *Parkhurst* v. *Alexander*, 1 John. Ch. R. 394. The reasoning upon which this doctrine is founded is the obvious policy of the registry acts, the duty of the party purchasing under such circumstances to search for prior encumbrances, the means of which search are within his power, and the danger (so forcibly alluded to by Lord Hardwicke) of letting in parol proof of notice or want of notice of the actual existence of the conveyance, *Hine* v. *Dodd*, 2 Atk., 275."

Story's Equity, Jurisprudence Sec.

The case of *Brush* v. *Ware*, above cited, establishes conclusively that the purchasers under Taylor bought with notice. See also *Cox* v. *Manvel*, 52 N. W. Rep., 273.

The warrant on its back showed that the children of Remsen (except Harriet A.) were minors. It did not purport to be assigned by them, but by a guardian. Taylor and his vendees were bound to look to the power of the guardian, for under the act of Congress the guardian could not sell except under a proper decree of court.

The patent recited the act of Congress, the names of the Remsen children, the fact that they were minors, and that the warrant had been assigned as to their interest by their guardian. Every purchaser under the patent had all the facts brought to his notice which rendered the assignment void, unless a decree of the Orphan's Court authorized the sale, which was not recited. He was bound to ascertain the fact as to this decree.

It may be urged that the plaintiffs ought to have known the law from 1848 to 1890, and consequently to have known that they were entitled to a land warrant. But here, where it is not a question as to the *observance* of any law by plaintiffs, but simply a question of what actual knowledge they did have in fact, it is perfectly open to them to say that they did not know of the existence of the law. The maxim is accurately stated "ignorance of the law excuses no one," not "every man is bound to know the law." And the statement of the maxim indicates its limitations.

Brooms' Legal Maxims, 253.

The subject may be well summed up by the collation of two or three cases which show the substantial uniformity of the application of the doctrine. "The maxim *ignorantia legis neminem excusat* is not universally applicable, but only when damages have been inflicted or crimes committed. It is true that the law will not permit the excuse of ignorance of the law to be pleaded for the purpose of exempting persons from damages for a breach of contract, or from punishment for crimes committed by them, but on other occasions and for other purposes, it is evident that the fact that such ignorance existed will sometimes be recognized so as to affect a judicial decision." 44 N. J. L., 244. And, "There is no maxim which says that for all intents and purposes a person must be taken to know the legal consequence of his acts." Lush, J., in L. R., 3 Q. B., 639. "It would be too much to impute knowledge of this rule of equity" (the doctrtne of election). Westbury, Ld. Ch., in 11 H. L. Cas, 602.

Bouvier's Law Dictionary, page 978.

The statement of the complainants that they were ignorant of

their right to receive from the Government a land warrant for 160 acres is perfectly reasonable and probable. What proportion of people in their station of life know the rights of a Mexican soldier to a land warrant? Very few.

VIII.

THE COMPLAINANTS HAVE A RIGHT TO ADOPT AND RATIFY THE LOCATION OF THE PATENT BY THEIR CONSTRUCTIVE TRUSTEE.

The bill of complaint sets forth the facts from which it can be fairly inferred that Taylor acted in bad faith, and declares that "the defendants falsely pretend and claim that the sale of the said land warrant to him was made in good faith, etc., which claim and pretence is in no respect true." This allegation is supported by strong evidence of bad faith or fraud. The bill certainly makes out a case of constructive fraud and constructive trust, and thereupon asks that the constructive trustees may be declared to hold in trust for complainants, who have adopted and ratified the act by which the legal title passed into the said trustees. The learned counsel contend that this cannot be done, for that when we recognize the legal title in the defendants we discharge them of any trust. This is contrary to the uniform current of authorities hereinbefore cited.

Massie *v.* Watts, 6 Cranch., 148.
Bagnell *v.* Broderick, 12 Peters, 436.
Bank of Metropolis *v.* Guttschlick, 14 Peters, 1631.
Brush *v.* Ware, 15 Pet., 93.
Patterson *v.* Wynn, 11 Wheat., 380.
Irvine *v.* Marshall, 20 How., 558.
Townsend *v.* Greeley, 5 Wall., 326, 335.
Stark *v.* Starrs, 6 Wall., 402, 419.
Silver *v.* Ladd, 7 Wall., 419.
Meader *v.* Norton, 11 Wall., 442, 458.
Johnson *v.* Towsley, 13 Wall., 72, 87.
Carpentier *v.* Montgomery, 13 Wall., 496.
Shepley *v.* Cowan, 91 U. S., 330, 340.
Moore *v.* Robbins, 96 U. S., 530, 535.
Worth *v.* Branson, 98 U. S., 118, 121.
Marquez *v.* Trisbie, 101 U. S., 473, 475.
Felix *v.* Patrick, 145 U. S., 317.
And other cases cited *supra*.

In *Irvine* v. *Marshall*, 20 How., 558, it was held that,

"Although the officers of the land department may in practice, and as a rule of conveyance, have received the certificate of purchase as evidence of title, yet neither the practice nor the certificate itself can control the power either of the United States or of this Court, to adjudge or confirm the title to the land to the true owner."

In *Stark* v. *Starrs*, 6 Wall., 402, at 419, Mr. Justice Field said:

"These are only applications of the well-established doctrine that where one party has acquired the legal title to property to which another has the better right, a court of equity will convert him into a trustee of the true owner, and compel him to convey the legal title."

In *Meader* v. *Norton*, 11 Wall., 442, at 457, Mr. Justice Clifford said:

"Argument is not necessary to show that a patent in a suit at law is conclusive of title against the United States, and all others claiming under the United States by a junior title. Until the patent issues the fee is in the government, but when it issues the legal title passes to the patentee. Persons claiming to hold the land against the patent, cannot have relief in a suit at law, but courts of equity have full jurisdiction to relieve against fraud or mistake, and that power plainly extends to cases where one man has procured the patent which belonged to another at the time the patent was issued. *Bagnell* v. *Broderick*, 13 Pet, 435; *Patterson* v. *Wynn*, 11 Wheat., 380."

In *Felix* v. *Patrick*, 145 U. S., 317, at page 327, Mr. Justice Brown says:

"Having, then, no right to locate the scrip for his own benefit, he must be deemed to have located it for Sophia Felix and as her representative. It was declared by this court as early as 1810, in the case of *Massie* v. *Watts*, 6 Cranch, 148, that if an agent located land for himself which he ought to locate for his principal, he is in equity a trustee for his principal. In that case the defendant Massie had contracted with one O'Neal to locate and survey for him a military warrant for 4,000 acres in his name. Massie located the warrant with the proper surveyor, and, being himself a surveyor, fraudulently made a survey purporting to be a survey of the entry, but variant from the same, so that the land actually surveyed was not the land entered with the surveyor. This was done for the fraudulent purpose of giving way to a claim of the defendants which he surveyed on the land entered for the plaintiff, whereby the plaintiff lost the land, and defendant obtained the legal title. This court held that Massie held such land as trustee for O'Neal. 'But Massie,' said Chief Justice Marshall, (p. 169,) 'the agent of O'Neal, has entered and surveyed a portion of that land for himself, and obtained a patent for it in his own name. According to the clearest and best established principles of equity, the agent who so acts becomes a trustee for his principal. He cannot hold the land under an entry for himself otherwise than as trustee for his principal.' This case was subsequently

cited with approval in *Irvine* v. *Marshall*, 20 How., 558. So in *Brush* v. *Ware*, 15 Peters, 93, where an executor obtained a certificate for 4,000 acres of land, and afterwards sold and assigned the same, when it appeared under the will that he had no right to sell the land, it was held that the purchaser to whom the patent was subsequently issued, took with notice of the prior title of the heirs, and was bound to make the conveyance asked from him. To the same effect are *Stark* v. *Starrs*, 6 Wall, 402, 419; *Meader* v. *Norton*, 11 Wall, 442, 458. And in *Widdecombe* v. *Childers*, 124 U. S., 400, 405, it was held that a person who had obtained a patent to lands which the patentee knew he had no right to claim, took the legal title subject to the superior equities of the rightful owner. In delivering the opinion, Chief Justice Waite said: 'The holder of a legal title in bad faith must always yield to a superior equity. As against the United States his title may be good, but not as against one who had acquired a prior right from the United States in force when his purchase was made under which his patent issued. The patent vested him with the legal title, but it did not determine the equitable relations between him and third persons.' See also *Morris* v. *Joseph*, 1 West Va., 256. The substance of these authorities is that, whenever a person obtains the legal title to land by any artifice or concealment, or by making use of facilities intended for the benefit of another, a court of equity will impress upon the lands so held by him a trust in favor of the party who is justly entitled to them, and will order the trust executed by decreeing their conveyance to the party in whose favor the trust was created. It is of no consequence in this connection that Sophia Felix was ignorant of the defendant's acts, or of the trust thereby created, *since she was at liberty upon discovering it, to affirm the trust and enforce its execution.* *Bank of Metropolis* v. *Guttschlick*, 14 Peters, 19, 31; *Moses* v. *Murgatroyd*, 1 Johns, Ch. 119; *Cumberland* v. *Codrington*, 3 Johns., Ch. 229, 261; *Neilson* v. *Blight*, 1 John. Cas 205; *Weston* v. *Barker*, 12 Johns., 276."

IX.

THE STATUTES OF LIMITATION OF MINNESOTA DO NOT APPLY TO A SUIT IN THE FEDERAL COURT WHICH IS PURELY EQUITABLE.

"As to matters of equitable cognizance merely, unless in express terms it is made applicable thereto, the statute of limitations does not apply. In other words, the statute is not binding on courts of chancery in cases of exclusive equitable cognizance. But the court often refuses to interfere where there has been gross laches or a long or unreasonable acquiescence in the assertion of adverse claims, and adopts in cases to which the statute does not strictly apply, a period within which its aid must be sought, similar to that prescribed in analogous cases at law. (*Askew* v. *Hooper*, 28 Ala., 634.) But where the claim is purely equitable, unless expressly so provided, the statute does not apply thereto, and the lapse of time, however long, will

not deprive a party of his remedy thereon if there is a reasonable excuse for delay, (*Pitzer* v. *Burns*, 7 W. Va., 64; *Askew* v. *Hooper*, 28 Ala., 634; *Keaton* v. *McGwier*, 24 Ga., 217; *Burden* v. *Stein*, 27 Ala., 104; *Union Bank* v. *Stafford*, 12 How. (U. S.), 327; *Wood* v. *Ford*, 29 Miss., 57,) as the court will not allow a just claim to be defeated simply because of the lapse of time, if the party has not, in view of the circumstances, been guilty of unreasonable delay."

Locke *v.* Caldwell, 91 Ill., 417.
1st Wood on Limitations, page 144.

In the consideration of purely equitable rights and titles, courts of equity are not governed by the statute of limitations.

Gest *v.* Packwood, 39 Fed. Rep., 525.

X.

THE COMPLAINANTS' RIGHT IS NOT BARRED BY THE STATUTE OF LIMITATIONS.

The statutes in force in the State of Minnesota when this suit was commenced were as follows:

"Actions can only be commenced within the period prescribed within this chapter after the cause of action accrues, except where in special cases a different limitation is prescribed by statute. (G. S. Minn., 1894, sec. 5133; G. S. 1866, ch. 66, sec. 3; G. S., 1878, ch. 66, sec. 3).

Within the fifteen years' limitation.

"No action for the recovery of real property or for the recovery of the possession thereof, shall be maintained unless it appears that the plaintiff, his ancestor, predecessor or grantor was seized or possessed of the premises in question within fifteen years before the commencement of action. The period prescribed in the preceding sections for the commencement of actions are as follows:" (Id. sec. 5134; G. S., 1866, ch. 66, sec. 4; G. S., 1878, ch. 66, sec 4, as amended 1889, session laws, ch. 91, sec. 1.)

There are two other statutes of Minnesota, being subdivisions 6 and 7 of sec. 6, ch. 66, of the General Statutes. These clauses read as follows, and are

Within the six years limitation:

"Sixth. An action for relief on the ground of fraud; the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud.

"Seventh. Actions to enforce a trust or compel an accounting, where the trustee has neglected to discharge his trust, or has repudiated the trust relation, or has fully performed the same."

(*Id.*, sec. 5136; G. S. 1866, ch. 66, sec. 6, as amended 1877, Session Laws, ch. 24, sec. 1; G. S. 1878, ch. 66, sec. 6.)

Fifteen years limitation.

The defendants evidently abandoned any effort to show title by adverse occupation for fifteen years, under the Minnesota statute, and the testimony does not support such a claim.

If this statute governs the case, the suit was brought in season, as to all of the land except the right-of-way conveyed to the Minnesota and Pacific Railroad Co. in 1858, upon which it laid its tracts in 1862. The rest of the land was not occupied until 1880, and subsequent years. See defendants, Ex. No. 11 and pages 159, 160, 163, 184, 19 2and 196 of the printed record. If in order to defeat the complainants, it is necessary for the defendants to show that they have been in the adverse possession of this land for fifteen years before the beginning of this action, they have failed to do so except as to the aforesaid right-of way.

Ryder *v.* Emrich, 104 Ill., 474.
Kane County *v.* Herrington, 50 Ill., 239.

"If the legal estate would not be barred at law by the statute of limitations, the equitable estate would not be barred in equity by lapse of time."

3 Wait., Act. and Def., pp. 197, 198.

"If a legal title would in ejectment be barred by twenty years' adverse possession (*Shorter* v. *Smith*, 56 Ala., 208), courts of equity will act upon the like limitation and apply it to all cases of relief sought upon equitable titles or claims touching real estate."

1 Story's Eq. Jurisprudence, p. 155.

The complainants are seeking relief upon their equitable title.

Six Years' Limitations.

If the fifteen years' statute does not apply in this case, then the sixth subdivision of section 6, chapter 66 of the General Statutes of Minnesota (six years) does apply; (unless, of course, it be held that being a purely equitable suit in the federal court, it is not affected by any state statute of limitations.)

The seventh subdivision does not apply. It clearly relates to trusts founded on contract, that is, to express or implied trusts, not to trusts which are raised by actual or constructive fraud or mistake, not to constructive trusts.

Sage *v.* St. Paul, etc. Ry. Co., 44 Fed. Rep., 817,
St. Paul etc. Ry. Co. *v.* Sage. 49 Fed. Rep., 310.

Cook *v.* Van Ellen, 30 U. S., 648.
Rolf *v.* Gregory, 34 N. J., Eq., 224.
Lewis *v.* Welsh, 47 Minn., 193.

In *Sage* v. *St. Paul etc., Ry. Co.*, 44 Fed Rep., (affirmed in 49 Fed. Rep., 315, on this point), it was held that,

"Where a railroad company has complied with an act of Congress granting land to the State of Minnesota for railroad purposes, and with the state law transferring the grant to it, a transfer by the state to another company is a constructive fraud, as the lands are held by the state in trust for the former company; and an action to recover such land is not governed by General Statutes of Minnesota, chapter 66, title 2, section 6, subdivision 7, which specifies the period of limitations for 'actions to enforce a trust or compel an accounting,' but by subdivision 6, which relates to actions 'for relief on the ground of fraud,' and specifies that the cause of action shall not be deemed to have accrued until a discovery of the fraud."

The case of *Burk* v. *Western Land Association*, 40 Minn., 506, is cited by the defendants to show that the seventh subdivision applies to the case of a constructive trust.

This case was a plain mistake, based on considering such trusts as the present one, implied trusts, instead of constructive trusts. We are warranted in saying that it is not a precedent in the Court which decided it, and will doubtless be overruled at the first opportunity. We say this with the greatest respect for the Supreme Court of Minnesota, and for the accurate Judge who wrote the opinion in the Burk case.

It is one of those lapses which the best of lawyers and judges are occasionally guilty of. The Circuit Court of Appeals, as well as Judge Nelson, in the Circuit Court, saw this in the Sage case. It is sufficiently proven by the case of *Lewis* v. *Welsh*, 47 Minn., 193. In this last case, which was a constructive trust arising from constructive, not actual, fraud, the court held subdivision 6 to apply, and though expressly referring to subdivision 7 (opinion, p. 203), refused to apply it. If subdivision 7 properly applied in the Burk case, it applied equally in *Lewis* v. *Welsh*, and that case was wrongly decided.

The statute uses the language, "discovery of the facts constituting the fraud." There is no reason why this should be limited to actual, moral fraud. The purpose of the statute is to preserve the rights of one who is innocently ignorant of the facts constituting his cause of action in certain cases, whether it be founded on actual or legal fraud. The same reason for the statute holds good if the facts con-

stitute a constructive fraud. The victim of such fraud is equally entitled to protection.

The statute (subdivision 6) did not begin to run till the discovery of the facts constituting the constructive fraud.

Where there has been no negligence or laches on the part of a plaintiff in coming to the knowledge of a fraud, the statute of limitations does not begin to run until the fraud is discovered by, or becomes known to, the party suing or those in privity with him.

Bailey *v.* Glover, 21 Wall., 342, 349.
Jones *v.* Van Doren, 130 U. S., 684.
Avery *v.* Cleary, 132 U. S., 604.
In re Crosley, L. R., 35, Ch. Div., 266.
Hovenden *v.* Lord Annesley, 2 Sch. & Lefr., 634.
South Sea Company *v.* Wymondsell, 3 P. Will., 143.
Delraine *v.* Brown, 19 Conn., 421.
Relf *v.* Everly, 23 Iowa, 467.

"The statute of limitations does not run against a party to bar his right of action for the correction of a mistake, until he discovers the mistake, or until he might discover it by pursuing inquiries suggested *by facts within his knowledge.*"

Manatt *v.* Starr, 72 Iowa, 677.

"The knowledge which will set the statute in operation must be of the *fundamental fact* from which the conclusion of fraudulent intent is drawn. Thus, where a conveyance purports, on its face, to be for a valuable consideration, knowledge of its existence, and of the fact that the grantor is insolvent cannot be deemed knowledge of facts constituting a fraud; for the controlling fact upon the question of fraud in such case is that the conveyance is without consideration, and until that fact is known the party is deemed ignorant of the fraud."

Erickson *v.* Quinn, 47 N. Y., 410.
Beach on Modern Equity Jurisprudence, page 88.

In Evans' appeal, 81 Pa. St. Rep., 278, cited by defendant's counsel, it was decided, that as a general rule, a constructive trust as to personal rights may be asserted at any time within six years after the knowledge of the facts creating it.

Oliver v. *Piatt*, 3 How., 332, decides that,

"Lapse of time is no bar to a subsisting trust in real property. The bar does not begin to run until knowledge of some overt act of

an adverse claim or right set up by the trustee is brought home to the *cestui que trust*. The lapse of any period less than twenty years will not bar the *cestui que trust* of his remedy in equity, although he may have been guilty of some negligence, where the suit is brought against his trustee, who is guilty of the breach of trust, or others claiming under him with notice."

In *Reynolds* v. *Summer*, 126 Ill., 58, it is decided that the statute of limitations does not begin to run against a trust so long as it is acknowledged to exist by the trustee, nor until it is repudiated and disallowed by him. Possession, to create a bar under the statute, must be open, notorious and adverse or hostile to the party sought to be barred. Where it is taken by a trustee or agent, it is the possession of the *cestui que trust* or principal, and cannot be adverse until the trust is openly disavowed or denied, and this fact is brought home to the knowledge of the *cestui que trust*.

We submit that there has been no such laches on the part of the appellants as would set the statute of limitations in motion.

The case of *St. Paul, etc., Ry. Co.* v. *Sage*, 49 Fed. Rep., 315, is cited by the defendants' counsel to support the proposition that the sixth subdivision of the sixth section of chapter 66 of the General Statutes of Minnesota applies to such a constructive fraud and such a constructive trust as is presented in the present case.

The subdivision reads as follows:

"Sixth. An action for relief on the ground of fraud; the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud."

The case decides that this subdivision applies to a case where the legal title was acquired wrongfully but *without actual fraud*, and where the person who has so become invested with the legal title refuses to convey the same to the real owner. We have no quarrel with this case. If it has any application, we conceive that it is most favorable to the appellants.

The Court says, at page 321:

"This subdivision covers actions for relief on the ground of fraud, and as the statute is undeniably intended to include proceedings at law and in equity, it may well be argued that the clause includes not only such *actual* frauds as may form the basis for actions at law, but also such transactions as a court of equity will adjudge to be frauds, actual or *constructive*, thus including cases wherein a party having become vested with the title of property rightfully belonging to another, refuses to convey the same to the real owner, or to account to him for the value thereof, in case the same has been sold and the money appropriated by the one not entitled thereto, which

withholding of the money or its proceeds, would be deemed to be fraud upon the rights of the real owner."

If it applies to the constructive fraud of refusing to convey the title of land to the true owner, it applies with greater force to the constructive fraud of acquiring for one's self the title which a court of conscience will force him to reconvey.

It being conceded, as contended by the learned counsel, that the fraud referred to in the statute may be either *actual or constructive*, one or the other of which is necessary to sustain a constructive trust, it follows that a suit will be commenced in season, if it is begun within six years from the discovery of the facts constituting the actual or constructive fraud. Such facts in the present case are:

First, that the Remsen children had an interest in a land warrant.

Second, that it was conveyed by their guardian to Taylor.

Third, that she acted without authority of court.

Fourth, that the warrant was located in Minnesota

Fifth, that the defendants purchased and occupy the lands and refuse to restore the same.

Of all these facts the applicants, other than Mrs. Wetzel, and perhaps Harriet A. Heyer (now Van Zandt) were profoundly ignorant until a short time before the commencement of this suit.

The bill of complaint explains the reason for the delay. The evidence fully sustains the allegations of the bill, and is reasonable, probable and uncontradicted.

It would seem then that under the case, upon which the learned counsel so confidently rely, that affiants are not barred by the statute of limitations unless they have been guilty of such gross laches as will not excuse their failure to discover the fraud at an earlier date. This question will be discussed later.

In the case cited, the court find that the complainants had been guilty of such laches. The complainant was a corporation of the State in which the land was situated, and knew of its claim and ownership from the beginning, and was cognizant of the wrongful conduct of the defendant.

As said by the Court:

"Every step taken by the defendant was, of necessity, made openly and above board. The lands were selected as indemnity lands, belonging to the defendant, and the Governor of the State asked in due form that they be so certified. They were certified to the State and by the State were deeded to the defendant. These deeds were entered of record in the counties wherein the lands are situated, and, in fact every step taken in procuring the same was made part of the public

records of the Federal and State Land Departments, which were open to the scrutiny of the public. The means of knowledge on part of the complainant were too open and available for it to be credible that the company allowed a period of seventeen years to elapse after the date of the grant under which it claims, and four years after it had earned all it could under the grant, before any inquiry touching these lands was made in the interest of the company, and even the slightest inquiry or examination would have disclosed the fact that the State and United States authorities had selected and conveyed these lands to the defendant company, deeming that company to be entitled thereto."

The case cited could not have been otherwise decided. It differs from the case at bar *in toto coelo.*

The relation of co-tenantcy existed amongst the parties to this suit and those under whom they claim. This prevented the statute of limitations from running.

Taylor acquired a one-sixth interest by his purchase, namely, the interest of the widow Elizabeth Remsen. He thereby became a tenant in common with the minor children, who owned the equitable title to the other five-sixths. By acquiring the legal title he became also their trustee. The possession of a co-tenant is the possession of all and there can be no adverse possession until after what is equivalent to an actual ouster, or an exclusive possession of over twenty years. There can be no ouster without notice.

All who entered under Taylor stepped into his shoes and became co tenants as to the equitable title and trustees as to the legal title of the minor children and their heirs at law.

The possession therefore of the defendants was not adverse to their co-tenants, for there has been no actual ouster with notice, and such possession, if adverse, has not continued long enough to ripen into title.

Clymer et al. v. *Dawkins et al*, 3 How., 674, decides that,

"The entry and possession of one tenant in common is ordinarily deemed the entry and possession of all the tenants; and this presumption will prevail in favor of all, until some notorious act of ouster or adverse possession by the party so entering is brought home to the knowledge or notice of the others. When this occurs, the possession is from that period treated as adverse to the other tenants. Such a notorious ouster or adverse possession may be by any overt act *in pais* by one tenant, of which the other tenants have due notice, or the assertion in any proceeding at law of a several and distinct claim ro title."

"The seisin and possession of one tenant in common of real estate is seisin and possession for the use of the others."

Kinney *v.* Slattery, 51 Iowa, 353.

Burns *v.* Bryne, 45 *id.*, 285.

Campbell *v.* Campbell, 13 N. H., 483.
Day *v.* Howard, 73 N. C., 1.
Bowen *v.* Preston, 48 Ind., 367.
Foulke *v.* Bond, 12 Vr. (N. J.), 527.
Covington *v.* Stewart, 77 N. C., 148.
Miller *v.* Myers, 46 Cal., 535.
Challefoux *v.* Ducharme, 8 Wis., 287.
Mining Co. *v.* Taylor, 100 U. S., 37.
Humbert *v.* Trinity Church, 24 Wend. (N. Y.), 587.
Phillips *v.* Cregg, 10 Watts (Pa.), 158.
Young *v.* DeBruhl, 11 Rich. (L. S. C.), 638.
Vaughn *v.* Bacon, 15 Me., 455.
Campan *v.* Campan, 44 Mich., 31.
Lillianskyoldt *v.* Goss, 2 Utah T., 292.
Fairclaim *v.* Shockleton, 5 Burr., 2604.
Ford *v.* Grey, Salk, 285.

One tenant in common may oust his co-tenant and hold in severalty, but no adverse possession can be construed against him until notice is brought home to him of such ouster.

Barr *v.* Gratz, 4 Wheat., 213.
McClung *v.* Ross, 5 Wheat., 116.
Clymer *v.* Dawkins, 3 How., 674.
Zellers *v.* Eckert, 4 How., 289.

XI.

THE COMPLAINANTS' RIGHT TO RELIEF IS NOT BARRED BY LACHES OR ACQUIESCENCE.

As to laches the facts are, briefly: Harriet A. Meyer, one of the minor heirs of George W. Remsen, was born in 1831, and was seventeen years old when the land warrant was issued and sold. She was then a married woman, and is now the wife of Van Zaudt, having married the second time before 1889. She was fifty-eight years old in 1889, when Hendrickson visited Philadelphia. Mary Ann Remsen, one of the minor heirs, was born August 12, 1835, was therefore thirteen yeers old when the land warrant was issued and sold. She died June 12, 1882, and left surviving two married daughters, the plaintiffs. Emma F. Hergesheimer and Maggie L. Heckmen. John Wesley Remsen, one of the minor heirs of George W., was born November 8, 1837, and was hence under eleven years of age when

the land warrant was issued and sold. He died on the 11th of October, 1862, unmarried, without issue, and his interest then descended, under the Minnesota statutes, in equal shares to the mother and brothers and sisters. (Ch. 37, sec. 1, subd. 3, Statutes of Minnesota, 1849–1858.) George W. Remsen, Jr., one of the minor heirs, was born September 8, 1842, and was six years old when the land warrant was sold. He died in 1878, leaving the plaintiffs Mary J. Remsen, his widow, Geo. W. A., his son, Clara B. and Mabel, his daughters. Geo. W. A. was born July 2, 1866, and was twenty-three years old when Hendrickson went to Philadelphia, in December, 1889. Clara B. was born July 3, 1868, and was twenty-one years old at that time. Mabel was a minor, being twenty-one years old when called as a witness. This was in December, 1892, so she must have been eighteen at the time of Hendrickson's visit.

These plaintiffs, as well as their ancestors, heirs of the soldier, Geo. W., were all poor and ignorant people, as their evidence shows. They had lived in Pennsylvania, Maryland and New Jersey, scattered and separated from each other. The four minor children of George W., ranging in age from six to thirteen years, in 1848, when this land warrant was issued and sold, knew their father to have been a soldier, and that he died in Mexico. We may safely concede, for the argument sake, that all of them knew this either in 1848 or soon after; but none of them knew of the existence of the act of Congress of February 11, 1847; none of them knew that their father was entitled to a land warrant under the law; none of them knew it had ever issued, or that it had been sold by their mother; none of them had the slightest knowledge beyond, at most, that their father had died a soldier in the Mexican war, until December, 1889, except *possibly* Harriet A. Van Zandt, who accompanied her mother to the lawyer's office and who signed a paper, the character of which she says she did not know. Clara A. Remsen, who was born in July, 1868, testified that in 1891 she had heard her mother speak about the land and the claim of the heirs, but it was some time in 1890, which was after Hendrickson's visit to Philadelphia. She had never heard of it before. It is incorrect, as stated in the defendant's printed argument, that James W. Hopkins testified that "it was reported among the family that he had a land warrant and sold it, and that it was generally known among the children."

His testimony was as follows:

"Q. It was reported generally amongst the family that she had a land warrant and sold it?

A. Yes, sir.

Q. And generally known among the children?
A. I knew it.
Q. And it was generally known among the family?
A. I may say here that my father sold his about the same time. He was a soldier in the war of 1812.
Q. You say it was generally known among the family that she sold the land warrant?
A. Yes, I guess it was. I know I knew it. General Small sold it for her.
Q. And Harriett knew it I suppose?
A. I suppose she did.
Q. You have heard her speak about it, haven't you?
A. No; I have never heard the children speak about it, they were too young.
Q. I mean in after years?
A. No; I never heard of it. I believe she sold the land warrant to try and raise the children.

* * * * * * *

Q. When did you first hear about this claim for this land out West?
A. Well, I paid no attention to it. I think it has been probably two years ago. My sister, Mrs. Remsen, told me somebody called to see her about it, hunting up the heirs of George W. Remsen.
Q. About the time she told you of this, it was talked up among the heirs, was it that there was a claim out West?
A. So far as that is concerned I will tell you that there is not much visiting amongst those children at my house.
Q. Did you see them?
A. No; I scarcely ever see them.

* * * * * * *

Q. You don't mean to say that you ever had any conversation with any of the children in reference to this matter?
A. No.

* * * * * * *

Q. *Prior to this, had you ever heard the children speak of knowing that their father was entitled to any land?*
A. *No sir; never.*"

Printed record, pp. 129, 130, 131, 132.

From December, 1889, to the commencement of this suit, May, 1892, two years and five months, the facts are agreed to and shown by two stipulations. (Record pp. 197, 198.) Briefly these facts are: In December, 1889, one Hendrickson, who lived in St. Paul, went to Philadelphia and got Mr. Mayne, now one of the plaintiffs' solicitors to this suit, to assist him in hunting up the Remsen heirs. After they found them the heirs were informed that a land warrant had been issued and sold, that there was some question of the validity of

the transfer, and a chance to claim the land; they proposed that the heirs should give them a power of attorney; this the heirs declined to do without knowing more of the facts; Mr. Hendrickson and Mr. Mayne declined to tell the heirs where the land in question was or its value. Until then the heirs never knew that they or their father had or ever had had any claim to land or a land warrant in Minnesota or anywhere else. In May, 1890, their refusal became final and this negotiation was broken off. Between that time and August, 1891, the heirs did nothing. And this is the only time during which they can be charged with any delay. This delay was not over a year at most: Considering their ignorance, the tender age of three of them, their scattered residences, it was certainly not an unreasonable delay. They had no knowledge of the facts except from Hendrickson, whom they did not know, and who said that there was some question about the validity of the sale of a land warrant, and that they had some chance to claim some land. To this rumor coming from a stranger they were not called upon to give any great attention. They were not called on to employ counsel and institute an investigation of possible land claims. The stipulations shows that after this time but few transfers or mortgages were made affecting a very small part of the premises in suit. So for the most part the status of the title did not change from this time on, and no one suffered prejudice by the short time which elapsed between that time and the institution of this suit.

After this Mr. Mayne, never having been attorney of any of the plaintiffs, investigated the facts on his own account. In August, 1891, he got the plaintiffs together and informed them fully. This resulted in *immediate* preparation for this suit. We are satisfied that no prejudicial delay occurred after that time.

"Laches is the neglect to do something which by law a man is obliged to do."

Sebag *v.* Abitbol, 4 Maule & S., 463.
Anderson Law Dict., 593.

"It implies, however, a knowledge of one's rights."

Massie *v.* Heiskell, 80 Va., 805.

"The granting or refusing relief in equity on the ground of laches in applying for it must depend upon the special circumstances of each case."

Bryan *v.* Kales, 134 U. S., 126.

"Whether laches is to be imputed to a party seeking the aid of a court of equity depends upon the circumstances of the particular case."

Griswold *v.* Hazard, 141 U. S., 260.

"The question of laches does not depend upon the fact that a certain definite time has elapsed since the cause of action accrued, but upon whether, under all the circumstances of the particular case, the plaintiff is chargeable with a want of due diligence in failing to institute proceedings earlier."

Townsend *v.* Vanderwerker, 160 U. S., 171.

"Length of time alone is not the test of the staleness of a demand but the question must be determined by the facts and circumstances of each case and according to right and justice."

Marcotte *v.* Hartman, 48 N. Y., 767.

"When a party has equitable rights a court will not refuse relief, although the claim has been outstanding for a long time, if the reason for delay is such as not to defeat the party's right to its enforcement upon the ground of laches or acquiescence."

Lunn v. Johnson, 3 Ired. (N. C.) Eq., 70.
Mason v. Crosby, 1 Davies (U. S. C. C.), 303.
Kimball v. Ives, 17 Vt., 430.
Bancroft v. Andrews, 6 Cush. (Mass.), 493.
Wood on Limitations, ch. VI, sec. 60, page 151.

"It is a rule founded in justice and reason that equity will not refuse relief where there has been a reasonable excuse for the delay."

Wood on Limitations of Actions, ed. 1883, sec. 60, page 124.
Bell v. Hudson, 2 Am. St. Rep., 805.

"The fact that a party has delayed the enforcement of his right for the statutory period is *prima facie* evidence, but even this is not decisive, as, if there is a sufficient cause for delay, the Court will enforce the right."

Preston *v.* Preston, 95 U. S., 200.
Neeley's Appeal, 85 Penn. St., 387.
Reed *v.* West, 47 Texas, 240.
Rogan *v.* Walker, 1 Wis., 631.
Lawrence *v.* Rokes, 61 Me., 38.
McKnight *v.* Taylor, 1 How. (U. S.), 161.
Wood on Limitations, ch. VI, sec. 60, page 148.

"The poverty of the vendor, added to the other circumstances, is also a material ingredient in such a case."

Bell *v.* Hudson, 2 Am. St. Rep., 806.

"Absence of complainant from the State, and late discovery of the fraud, are excuses for delay."

Hallett *v.* Collins, 10 How., 174.

In *Scherer* v. *Ingeerman*, 110 Ind., 428, it is decided, that

"It is only where the laches of a party are of such a character as to work an equitable estoppel that his right of action will be limited to a less period than that fixed by the statutes of limitations."

"There may be cases of statutory proceedings, or cases of purely equitable cognizance, where the laches of a party may be of such a character and under such circumstances as will bar his right to prosecute his action, in less time than that fixed by the statute of limitations. *But that is only in cases where the laches are of such a character and under such circumstances as to work an equitable estoppel.*"

State *ex rel. v.* Gordon, 87 Ind., 117.

City of Logansport *v.* ———, 99 Ind., 531 (50 Am. R. 109).

Earle *v.* Earle, 91 Ind., 27.

"Where the question of laches is in issue, the plaintiff is chargeable with such knowledge as he might have obtained upon inquiry, provided the *facts already known* by him were such as to put upon a man of ordinary intelligence the duty of inquiry."

Johnston *v.* Standard Min. Co., 148 U. S., 360.

"There can be no laches in failing to assert the rights of which a party is *wholly ignorant*, and whose existence he had no reason to apprehend."

Halstead *v.* Grinnan, 152 U. S., 412.

"Parties ignorant of their rights cannot be charged with laches."

Hannon v. Hounihan, 85 Va., 429.

"Acquiescence imports full knowledge: *Life Assn. of Scotland* v. *Siddal*, 4 De. Gex. F. & J., 74. Therefore a party will not be held to *acquiesce* in acts which he did not know he had any right to dispute."

Cholmondeley v. Clinton, 2 Mer., 171, 362.

"Nor is the rule confined to cases of acquiescence merely; for it is

said that where one is ignorant of the facts, there can be neither laches nor acquiescence."

Charter v. Travelyn, 11 Clark & F., 714, 740.
Bennett v. Colley, 1 Mylne & K., 225, 232.
Wood on Limitations of Actions, ed. 1883, sec. 61, p. 125.

"Where fraud is relied on in cases of trust, there can be no laches by reason of anything done or neglected, where the party seeking relief has, without any fault of his own, remained in ignorance of his rights."

Rolfe *v.* Gregory, 13 Week. Rep., 355.
Savery v. King, 5 H. L. Cas., 626, 665.

"In brief, time does not commence to run, except there is full information and knowledge by a party of his rights and the injury done, and he has such notice thereof as that he ought to have made inquiry, or where there is undue influence, and the disability is removed, or where he himself possesses the means of knowledge."

1 Sugden on Vendors, 8th Am. ed., Perkins' notes, 387, note p. 1.
Bell v. Hudson, 2 Am. St. Rep., 802.

"It is settled that mere delay does not constitute laches. There must be negligent delay at the least; there must be knowledge of the facts, or sufficient of the facts to call for further inquiry."

In order that the remedy should be lost by laches or delay, it is, if not universally, at all events ordinarily necessary, that there should be sufficient knowledge of the facts constituting the title to relief."

Lindsay Petroleum Co. v. Hurd, L. R., 5, P. C., 22.

In *Archibald* v. *Scully*, 9 H. L. C., 383, Lord Wensleydale said:

"So far as laches is a defense I take it that where there is a statute of limitation the objection of simple laches does not apply until the expiration of the time allowed by the statute. But acquiescence is a different thing; it means more than laches. If a party, who could object, lies by and knowingly permits another to incur an expense in doing an act under the belief that it would not be objected to, and so a kind of permission may be said to be given to another to alter his conditions, he may be said to acquiesce; but the fact of simply neglecting to enforce a claim for the period during which the law permits him to delay, without losing his right, I conceive cannot be an equitable bar. In this case I cannot say that anything has been done or permitted which falls under the definition of acquiescence."

"In order to bar the right to equitable relief the acquiescence must be with the knowledge of the wrongful acts themselves, and of their injurious consequences; it must be voluntary, not the result of acci-

dent, nor of causes rendering it a physical, legal, or moral necessity, and it must last for an unreasonable length of time, so that it will be inequitable even to the wrongdoer to enforce the peculiar remedies of equity against him, after he has been suffered to go on unmolested and his conduct apparently acquiesced in."

Pomeroy's Equity Jurisprudence, Vol. 2, page 280, sec. 817.

"Mere delay and acquiescence will not therefore defeat the remedy unless it has continued so long as to defeat the right itself. * * * Upon obtaining knowledge of the facts he should commence the proceedings for relief as soon as reasonably possible. Acquiescence, consisting of unnecessary delay after such knowledge, will defeat the equitable relief."

Pomeroy's Equity Jurisprudence, Vol. 2, page 281, sec. 817.

The following cases are cited by the respondents' counsel, as maintaining the position that the complainants' claim is barred by their laches:

Russell v. *Transylvania University*, 1 Wheat., 432, was a suit, the object of which was to obtain a conveyance from the defendants of a certain tract of land. The question of laches or of acquiescence is not mentioned.

Elmendorf v. *Taylor*, 10 Wheat, 152. This case decides, "That although the statutes of limitations do not apply, in terms, to courts of equity, yet the period of limitation which takes away a right of entry, or an action of ejectment, has been held, by analogy, to bar relief in equity, even where the period of limitation for a writ of right, or other real action, had not expired. Where an adverse possession has continued for twenty years, it constitutes a complete bar in equity, wherever an ejectment would be barred, if the plaintiff possessed a legal title."

In the case at bar the possession has not been sufficiently long, even if adverse, to bar the complainants had they sued in ejectment upon the legal title, except as to the right-of-way across the property which was conveyed to the Minnesota and Pacific R. R. Co. July 19, 1858, and occupied by it in 1862,—this suit being commenced on May 3, 1894. Besides there was no excuse offered for the delay in the Elmendorf case.

McKnight v. *Taylor*, 1 How., 161. This case decides that "There must be conscience, good faith, and reasonable diligence to call into action the powers of a court of equity. In matters of account, where they are not barred by the statute of limitations, courts of equity refuse to interfere, after a considerable lapse of time, from considerations of public policy, and from the difficulty of doing entire justice,

when the original transactions have become obscure by time, and the evidence may be lost."

In this case, there was an unexplained delay of nineteen years and three months. It is plainly distinguishable from the case at bar.

In *Wagner* v. *Baird*, 7 How. 234, 258, Mr. Justice Grier says:

"In cases of concurrent jurisdiction, courts of equity consider themselves bound by the statutes of limitation which govern courts of law in like cases; and this rather in obedience to the statutes than by analogy. In many other cases they act upon the analogy of the limitations at law; as where a legal title would in ejectment be barred by twenty years' adverse possession, courts of equity will act upon the like limitation, and apply it to all cases of relief sought upon equitable titles, or claims touching real estate."

It was not pretended that the *cestuis que trust* were ignorant of the transaction upon which their equity was based, and no excuse whatever is given for a delay of forty years. The court says: "They have shown nothing to mitigate the effect of their laches and long acquiescence." Distinguishable.

In *U. S.* v. *Moore*, 12 How., 209, 222, Mr. Justice Catron says:

"The party was under no disability, and slept on his rights as he now claims them, for nearly fifty years, without taking a single step. He makes no excuse for his long delay, and cannot now get relief by having his title completed." Distinguishable.

Badger v. *Badger*, 2 Wall, 87, was a case in which an administrator fraudulently purchased property of his intestate for himself. The bill was dismissed, because there was no excuse for the complainant's laches for twenty-eight years, set up in the bill and proven by the evidence. Distinguishable.

In *Harwood* v. *R. R. Co.* 17, Wall, 78, it was decided that where a bill is filed by a third party to set aside as fraudulent completed judicial proceedings, regular on their face, the plaintiff in those proceedings should be brought in as a party.

Where such a bill is filed five years after the judicial proceedings, which it is sought to set aside, have been completed, the cause of so considerable a delay should be specifically set out. And if ignorance of the frauds is relied on to excuse the delay, it should be shown specifically when knowledge of the fraud was first obtained, and why it was not sooner obtained. Distinguishable. These facts are fully set forth in the bill in the present case.

In *Hume* v. *Beale*, 17 Wall, 336, the rule of equity was applied, that if a *cestui que trust*, after being *sui juris* has, with full knowledge of a breach of trust, for a long time acquiesced in it, equity will not relieve him. Distinguishable.

McQuiddy v. *Ware*, 20 Wall, 14, decides that—

"A man who has neglected his private affairs and gone away from his home and State, for the purpose of devoting his time to the cause of rebellion against the Government, cannot come into equity to complain that his creditors have obtained payment of admitted debts through judicial process obtained upon constructive notice, and on a supposition wrongly made by them that he had no home in the State or none that they knew of. Especially is this true when there is no allegation of want of actual knowledge of what they were doing."

This case has no application to the case at bar.

Marsh v. *Whitmore*, 21 Wall, 178, decides—

"Where an attorney sold bonds of a client at public sale, and bought them in himself, at their full value at the time, and the client was aware of the purchase and acquiesced in it for twelve years, it is then too late for the client to attempt to impeach the validity of the sale." Distinguishable.

In case of Broderick's will, 21 Wall, 503, it was decided that,

"Ignorance of a fraud committed, which is the ordinary excuse for delay, does not apply in such a case, especially when it is alleged that the circumstances of the fraud were publicly and generally known at the domicile of the testator shortly after his death."

It is not pretended that there was any publicity given to the sale of the land warrant. And if there had been, it would not have reached the children of tender years, whose rights were affected.

Brown v. County of Buena Vista, 95 U. S., 157, decides that,

"A court of equity will not relieve against a judgment at law where the party seeking its aid has been guilty of laches or fault. Whether the time which has elapsed since the discovery of the fraud, set up as the ground of relief, be sufficient to bar the remedy, is a question to be determined by the sound discretion of the courts."

This is admitted. It has no application.

In *Hayward v. National Bank*, 96 U. S., 611,

"A. borrowed of a bank money on call, and deposited with it as collateral security certain mining stocks, with written authority to sell them at its discretion. The loan remaining unpaid, the bank notified him that, unless he paid it, the stocks would be sold. He failed, after repeated demands, to pay it, and they were sold, for more than their market value, to three directors of the bank, and the proceeds applied to the payment of the loan. A, who was advised of the sale, and that enough had been realized to pay his indebtedness, made no objection. The stocks were transferred to the purchasers. Nearly four years after the sale, the stocks having in the meantime greatly increased in value, A. notified the bank of his desire and purpose to redeem them, and subsequently filed his bill against it, asserting his right so to redeem, and praying for general relief. *Held*, that he is entitled to no relief."

In this case the complainant had full knowledge of all the facts from the beginning. Distinguishable.

Godden v. Kimmell 99 U. S., 201, decides that,

"In cases of concurrent jurisdiction, courts of equity consider themselves bound by the statutes of limitation which govern courts of law; in many other cases they act upon the analogy of the limitations at law; but even where there is no such statute governing the case, a defence founded upon the lapse of time and the staleness of the claim is available in equity where there has been gross laches in prosecuting the claim, or long acxuiescence in the assertion of adverse rights."

In this case facts were known by the complainant for many years, and no excuse for this delay is set up or shown. Distinguishable.

Wood v. *Carpenter*, 101 U. S., 135, was decided against the plaintiff, because, among other things, he knew, or might with ordinary care and attention have known, the facts upon which he asked relief. Distinguishable.

Holgate v. *Eaton*, 116 U. S., 33, decides, that

"A married woman, who on being informed of a contract made by her husband for the sale of an equitable interest in real estate held by her in her own right, repudiates it, and who, for more than two years, refuses to perform it whenever thereto requested, during which time the property depreciates greatly in value, cannot, after the expiration of that time, enforce in equity the specific performance of the contract by the other party."

Here there was the positive act of the complainant, which amounted to an estoppel upon her.

Speidel v. *Henrici*, 120 U. S., 377, decides that

"The general rule that express trusts are not within the statute of limitations does not apply to a trust openly disavowed by the trustee with the knowledge of the *cestui que trust.* A court of equity will not assist one who has slept upon his rights, and shows no excuse for his laches in asserting them."

Here there was an unexplained delay in suing, for more than fifty years. In the case at bar there was not the unequivocal adverse possession during the period required by the statute of limitations, nor was there any disavowal on the part of the trustee brought home to the *cestui que trust.*

Fletcher v. *Fuller*, 120 U. S., 534, was an action of ejectment, in which the question of laches did not arise.

In *Richards* v. *McCall*, 124 U. S., 183, it was decided that

"When a complainant in a bill in equity has been guilty of apparent laches, in commencing his suit, his bill should set forth the impediments to an earlier prosecution, the cause of his ignorance of his rights,

and when the knowledge of them came to him; and if it appears at the hearing that the case is liable to the objection of laches on his part, relief will be refused on that ground."

Distinguishable.

In *Richards* v. *McCall*, 124 U. S., 183, 189, Mr. Justice Harlan says:

"We find nothing whatever in the record to excuse the failure of the appellee to institute legal proceedings in due time, to have the sale set aside. He knew that the appellant relied upon the sale, and upon the face of it expended large sums. He knew that the premises here in dispute were in fact levied on for his debts, and were intended to be sold in satisfaction of those debts. But after the property has largely increased in value, and after sleeping upon his rights for nearly twelve years, with information, during the whole of that period, of every fact now relied upon by him, appellee asks aid of a court of equity to set aside the sale and conveyance and adjudge him to be the owner of the property."

Distinguishable.

In *Mackall* v *Casalier*, 137 U. S., 566, it is decided that

"Negotiations for settlement of a disputed matter, which one party hopes may result in a settlement and adjustment, do not operate to bar in equity the defense of laches, when the other party gives no encouragement to such hopes, never promises a settlement, never concedes that his own claims are doubtful, and never recognizes the others' claims."

No sufficient excuse was shown for the delay of nineteen years in bringing suit by the complainant, who was aware of all of the facts from the beginning. Distinguishable.

In *Boone* v. *Burlington, etc., R. R.*, 139 U. S., 692, the complainant had full knowledge of all the facts constituting his cause of action from the beginning, and it was held that he was barred by the statute of limitations and by laches.

In *Foster* v. *Mansfield, etc., R. R. Co.*, 146 U. S., 88, it was decided that

"If a bill to set aside a foreclosure sale of a railroad under a mortgage on the ground of fraud and collusion, be not filed until ten years after the sale, a presumption of laches arises, which it is incumbent on the plaintiff to rebut. No negligence is imputable in such case to a person *who is ignorant of his interest* in the property which is the subject of the alleged fraud; but if he is aware of his interest, and knows that proceedings are pending, the result of which may be prejudicial to them, he is bound to look into such proceedings so far as to see that no action is taken to his detriment."

Distinguishable.

In *Johnson* v. *Standard Mining Co.*, 148 U. S., 360, it is decided that

"Where a question of laches is in issue the plaintiff is chargeable with such knowledge as he might have obtained upon inquiry, *provided the facts already known to him were such* as to put the duty of inquiry upon a man of ordinary intelligence."

In this case the complainant had a knowledge of facts which should have put him upon inquiry and stimulated him to activity in asserting his rights. In the case at bar the complainants, except perhaps Elizabeth Wetzel, were thoroughly ignorant of every fact upon which their claim is based until within a short time before the institution of this suit.

United States v. *Flint*, 4 Sawyer, 42, was a suit to vacate certain patents by the United States upon confirmed Mexican claims, on the ground that said claims were not genuine and that their confirmation was procured by fraud on the part of the complainants. The suits were brought after a delay of eighteen years, for which no excuse was offered. The case is plainly distinguishable from the one at bar.

In *Speidel* v. *Henrici*, 15 Fed. Rep., 753, it was held that where a trustee of a valid express trust denied the right of the *cestui que trust* and his relation to the latter in respect to the trust property become adverse from that time the right of the *cestui que trust* to relief was subject to the operation of the law of laches and that an unexplained delay of seventeen years will bar the claim.

In *United States* v. *Beebee*, 17 Fed. Rep., 36, it was held to be a rule in equity that lapse of time may constitute a sufficient defense even in the absence of statutory limitations and without necessary reference to any question of laches. The suit was brought to cancel certain land patents on the ground that they were obtained forty-three years prior thereto by fraud, many of the alleged facts concerning which transpired more than sixty years before the filing of the bill. There was no explanation of the delay, so that it was a plain case of laches, the land in question having been held in adverse possession during the whole period. It is difficult to imagine a stronger case of laches.

In *Leavenworth* v *Chicago, etc. Railway Co.*, 18 Fed. Rep., 209, it is decided:

"That to take advantage of the exception provided for, in a case of concealed fraud where otherwise the party would be barred by reason of his laches of the statute of limitations, it must be made clear that the fraudulent transaction, from which relief is prayed, was one which concealed itself, or at least the allegations and proof must be such as to satisfy the court that the complainants could not have known of the facts constituting the fraud by the exercise of the proper diligence and care. Whatever is sufficient to excite attention and put the party on his guard and call for inquiry is no-

tice of every thing to which this inquiry would have led. When a person has sufficient information to lead him to a fact, he shall be deemed conversant."

Distinguishable.

Fakir v. *Houck*, 36 Fed. Rep., 403, was a bill to redeem realty from a deed of trust executed in September, 1876. The bill was filed in 1888 with the knowledge of the facts. During all this while he took no steps to assert his right. The court very properly held that he was guilty of laches and that his claim was stale.

In *Naddo* v. *Bardon*, 51 Fed. Rep., 403: "The plaintiff sued to recover land formerly owned by him and claimed by defendants under an execution sale, recorded deeds executed by his attorney in fact, and tax titles. Plaintiff alleged that the judgment was void, and that the other transfers were avoided by fraud on the part of the attorney. The suit was brought seventeen years after the execution sale and the deeds of the attorney, and thirteen years after the tax titles were recorded. To excuse his delay, he alleged that for ten or twelve years he had lived in Canada, and that 'until recently he had not learned of the extent to which the transfers' sought to be avoided had been made; that for about ten years he had known that the attorney and others claimed that he had lost all rights in the land, but until recently he had been too poor to enforce his rights. It was held that he was guilty of laches, which the allegations of the bill were not sufficient to excuse."

This case is distinguishable.

In *Red River & Lake of the Woods Railroad Co.* v. *Sture*, 32 Minn., 95, it was decided that

"A settler who has entered public land of the United States under the provisions of the homestead law, although no patent has been issued, has an *inchoate* title to the land, which is property. This is a vested right which can only be defeated by his own failure to comply with the conditions of the law. If he complies with these conditions, he becomes invested with full ownership, and the absolute right to a patent. Under the Act of May 14, 1880, his right relates back to the date of his settlement."

This case has no bearing upon the case at bar.

In *McKinney* v. *Bode*, 33 Minn., 450, seven years before the patent issued, the plaintiff abandoned the land and gave up the design of becoming entitled to a patent. Others, by performing its conditions, kept it alive for themselves. After the patent was earned and issued, the plaintiff sought to appropriate the benefit of what was done by those who earned it. The Court held that this was inequitable and refused him relief. The case is easily dintinguishable.

In *Lang* v. *Morey*, 40 Minn., 396, it was decided that,

"A person making an entry under the homestead laws of the

United States may execute a valid mortgage upon land so entered, prior to submitting final proof and receiving the final certificate."

This case has no relation to the case at bar.

In *Murphy* v. *Burke*, 47 Minn., 99, it is decided that

"After abandonment, and an utter neglect for more than 10 years, and until patents issued to another, to comply with the conditions of the certificates, the equity of the holder of the certificates to the patents is not superior to that of one who, under a void tax sale of the lands, complies with the requirements of the certificates and of the law, and receives the patents."

This case has no bearing for that the original claimant had full notice of all the facts from the first. The case is one of equitable estoppel.

In *Peabody* v. *Flint*, 6 Allen, 52, it was held that

"A minority of the stockholders of a corporation may maintain a bill in equity in behalf of themselves and the other stockholders, for conspiracy and fraud, whereby their interests have been sacrificed, against the corporation and its officers and others who participate therein. By unreasonable delay, however, in bringing their bill, they will forfeit their title to equitable relief."

The plaintiffs had full notice of the facts upon which they based their prayer for relief from the beginning, but failed to offer any excuse for their delay.

In *Learned* v. *Foster*, 117 Mass., 365,

"The plaintiff attempted to avoid the foreclosure of a mortgage under a power of sale on the ground that the real purchasers at the sale were the owners of the equitable interest. He had constructive knowledge of the sale which took place thirteen years before the filing of this bill."

He offered no excuse for this delay, and the court held he was guilty of laches and acquiescence.

In *Evans* v. *Bowen and others*, 99 Mass., 213, it is decided that

"A bill in equity to amend a decree obtained in fraud of the plaintiff ought ordinarily, by analogy with the period fixed by statute for the suing out of writs of review as of right, or the filing of petitions for review of judgments in civil actions, to be filed within one year from his discovery of the fraud."

Distinguishable.

In *Campan* v. *Van Dyke*, 15 Mich., 371, at page 378, Mr. Justice Christiancy said:

"For these reasons, we think, in a case like the present, a party seeking to set aside the decree must satisfy the court that he has not slept upon his rights, and that his delay for any period after he was aware of his right, and competent to prosecute them, has not opera-

ted to the prejudice of the other parties, nor deprived them of any of the evidence or other means for sustaining the decree, which they might have possessed had he brought his bill at as early a period as he might. In other words, we think the only just rule which can be laid down upon this point is, that such a bill must be brought within *a reasonable time;* having reference to the *nature* and *all the circumstances of the particular case.*"

Distinguishable.

Wilbur v. *Flood*, 16 Mich., 41, decides that

"Where land has been conveyed in exchange for personal property, and the grantee seeks to repudiate the bargain for fraud, he cannot reclaim his goods without tending a reconveyance. And a mere offer to "*trade back*," without such conveyance or tender, is no rescission. Any unnecessary delay to rescind such a contract will cut off the right of the party complaining of the fraud; and in the present case a delay of fifteen months was held unreasonable."

Distinguishable.

In *Hubbardston Lumber Company* v. *Bates*, 31 Mich., 158, it is decided that

"If the plaintiffs could have rescinded at all they could only do so within a reasonable time; and in the absence of any evidence excusing it, a delay and acquiescence, with full knowledge of the facts, of between four and five months, is longer than could reasonably be required to exercise the right of rescision."

Distinguishable.

In *Tollansbe* v. *Kilbreth*, 17 Ill., 522, it was held that

"A court of equity will not permit a *cestui que trust* to show a speculative disposition toward his trustee. If a *cestui que trust* discovers facts which would give him a right to repudiate the acts of his trustee, and has investigated them, or had a reasonable time to do so, he is bound to declare whether he will avail himself of the right or not, and cannot lie by in a position to affirm the bargain, if a profitable one, and repudiate it if unprofitable."

Distinguishable.

In *Bank of Liverpool* v. *Grand Junction Ry. Co.*, 125 Mass., 491:

The plaintiff filed a bill to reach and apply a certain sum of money in possession of the defendant corporation in payment of a debt due from it to him upon the grouud of fraud committed seven years before the filing of the bill. The complainant was acquainted with the facts from the beginning. The court held that the party was guilty of laches, and dismissed the bill.

Distinguishable.

In *Kane* v. *Bloodgood*, 7 Johnson's Ch, 90, it was decided that,

"As long as there is a continuing and subsisting trust, acknowledged or acted on by the parties, the statute does not apply; but if

the trustee denies the right of his *cestui que trust*, and *the possession* of the property becomes *adverse*, lapse of time, from that period, may constitute a bar in equity."

Distinguishable.

Ashurst's Appeal, 60 Pa. St., 290, was a suit to adjudge the defendant a trustee, and for an accounting. There was an *unexplained* delay of eight years on the part or the plaintiff. The bill was dismissed. The court holding that,

"An attempt to fasten *a constructive trust* on a purchaser must fail unless made within a reasonable time. Acquiescence is presumed from delay. If a trustee to sell becomes the purchaser, the purchase is generally voidable, but the *cestui que trust* must move in a reasonable time.

Distinguishable.

In Evans's appeal, 81 Pa. St. Rep., 278, it is decided that

"As a general rule a constructive trust as to personal rights may be asserted at any time within six years after the knowledge of the facts creating it.

Such trust is barred after six years, but laches for a shorter period, aided by other circumstances, will bar the right."

Distinguishable.

The case of *Felix* v. *Patrick*, 145 U. S., 317, is cited by the defendants, and relied upon as decisive of the case at bar.

In this case Sophia Felix, an Indian half-breed, the wife of David Garnelle, was under the act of Congress of July 17, 1854, entitled to and received, certain scrip for 480 acres locatable upon any unoccupied land of the Government. By express provision of the said statute no transfer or conveyance of such scrip was valid. Some person obtained possession of this scrip, to the amount of 120 acres, from her and her husband, and took from them a power of attorney and a quit-claim deed, both bearing date March 31, 1860, and executed in blank, omitting the name of the grantee and the description of the land. The power of attorney authorized the person, whose name was to be inserted, to sell and convey and confirm unto the purchaser thereof the following described pieces or parcels of land "*to be located* for us and in our names."

Two years afterwards, the power of attorney and quit-claim deed were turned over by someone to Matthewson T. Patrick, who located the scrip in the name of Sophia Felix upon what is now a part of the city of Omaha. He thereupon caused the power of attorney to be filled out with a description of the scrip and of the property located with it, and caused the name of William Ruth to be inserted as the attorney to sell and convey the property, a description of which

was also inserted. He also caused the quit-claim deed to be filled out with a description of the property, and inserted his own name as grantee, making the instrument purport to be a conveyance by Sophia and David Garnelle to himself. On September 7, 1863, he caused the said power of attorney and quit-claim deed to be filed for record in the Recorder's office of Douglas County; and caused the said William Ruth to execute and deliver to him a deed of the property, by virtue of his pretended authority, and caused the same to be filed for record. The deeds and power of attorney were duly recorded. These instruments were, as said by the court, "palpable devises to evade the law against the assignment of the scrip."

Under the said Act of Congress of July 17, 1854, this scrip could not be sold or assigned before it was located directly, or indirectly. It plainly appeared from the public records, recorded in Douglas county, Nebraska, where the land was situated, that the land was sold by Sophia Felix two years before it was located, and therefore that the sale was void and inoperative, and all subsequent purchasers of the land were thus fixed with notice of the infirmity of their title.

Patrick took possession of the land before it was located, and he and those claiming under him were in continuous adverse possession thereof until 1887, when the heirs of Sophia Felix, who died in December, 1865, brought a suit in equity in the United States Circuit Court charging fraud in the transaction by which she parted with the scrip, and seeking to have Patrick declared a trustee as to all the lands that he has not disposed of, and to impose upon his grantees the same liability.

To avoid apparent laches in not instituting suit at an earlier day, the plaintiffs alleged that Sophia Felix and her heirs, being members of the Sioux Nation until 1887, when they became citizens of the United States, were incapable of suing in any of the courts of the United States, (*although the courts of Nebraska were open to them*); that cotemporaneously with their becoming citizens of the United States they discovered the fraud which had been practiced upon Sophia, (*although they failed to show how the fraud came to be discovered, and why it was not discovered before, and although she and her husband were fully aware she had owned the scrip in question and that she had parted with it in 1861, yet she lived till 1865 and her husband till 1882 without making any attempt to discover what had become of it, and her heirs made no effort to discover the fraud until 1887, when their intelligence seems to have suddenly spruny into activity upon their becoming citizens of the United States.*)

A large part of the tract had before the commencement of the suit been platted, divided into lots, and sold to purchasers.

The Court held, that upon these facts, Patrick originally took the lands as trustee for Felix, under a constructive trust created by operation of law, and that his possession from the beginning was adverse to hers. That, knowing the fact that she had owned the scrip and had parted with it, Sophia and her husband ought to have made some inquiry about it. That Felix was bound to use reasonable diligence in discovering the fraud and seeking redress, and that the bill was fatally defective in not setting forth when and how the alleged fraud was discovered, in order that the Court might clearly see whether it could not have been discovered before.

The Court lays stress upon the fact that Sophia Felix must have known that she owned the scrip in 1861, and that she had then parted with some of it, and observes that no reason or excuse is suggested why, having this knowledge, she did not make inquiry about it at an earlier day. The fact that she was under tribal disabilities so far as the Federal Courts were concerned, did not prevent her from resorting the Courts of Nebraska. The plaintiffs fail in their bill to show when the facts upon which the relief is based were discovered, and why they were not discovered before. Besides, the Court doubts whether Patrick did not sell the land for a fair price and criticizes the general averment of fraud as to the manner in which the scrip was obtained from her. She and her husband being dead and the party who procured the scrip from her being unknown, stress is put upon the fact that the property had largely increased in value.

Felix v. *Patrick* is distinguishable from the case in hand, in several important particulars:

First. While Felix was apprised of her former ownership of the land scrip, and knew that she had parted with it through fraud or otherwise, the Remsen heirs, if human testimony is to be believed, were absolutely ignorant of the fact that they or their father were entitled under the law to any land scrip, or that any had ever been issued to them. While there was something to put Felix upon inquiry, there was absolutely nothing to start the Remsen heirs, until Hendrickson's visit to Philadelphia in December, 1889. There is no presumption that they knew of the statute of 1847, which gave to Mexican soldiers a land bounty, and they were not in moral or legal fault on account of this ignorance. No man can be guilty of laches

unless he is morally or legally to blame. The legal fiction, that every man is presumed to know the law is not applicable here.

The presumption of knowledge is rebuttable. The evidence which is positive and reasonable, and therefore credible, clearly proves the absence of knowledge. Thus the technical presumption, if any there be, is dissipated.

Fresh *v.* Gilson, 16 Pet., 327.
Provost *v.* Gratz, 6 Wheat., 481.
Lincoln *v.* French, 105 U. S., 614.

The only theory upon which blame for a failure to investigate can attach to the heirs, is that they had actual knowledge of their right to the land scrip before December, 1889.

The word laches, from its Latin *laxus*—loose, French *lache*—lax, slothful, is defined by Worcester to mean negligence, remissness, slackness.

Second. The court, in *Felix* v. *Patrick*, seriously questions whether Felix had not been paid full value for her scrip, and whether it was obtained from her by fraud, and calls attention to the fact, that both she and her husband are dead, and the party who procured the scrip from her is unknown, so that there has been a loss of evidence.

In the case at bar, there is no doubt but the land scrip of the minor heirs of George W. Remsen was sold and assigned by their guardian without authority of court, and contrary to the statute. The records of the court remain; they show no sign or vestige of an order of sale. Neither the files of the case, where the original order might be found, nor the docket where a record of it is always made, nor the index-book, where the order is indexed, after careful search, show that such an order ever existed. Had an order of this character been made, without doubt it would have been recited in the patent, and the absence of this recital is confirmatory evidence of the non-existence of the order. Upon this record evidence, unchanged and unchangeable, rests the plaintiffs' case. The death of witnesses cannot add to, or detract from, its conclusive character.

There is no pretence that the minor children received one penny for their interest. If their guardian, contrary to the statute, received its full value, the children and their heirs are not in any manner bound thereby either in a court of law or chancery.

Third. The Felix case was decided upon demurrer, and the court, in sustaining the demurrer, declares, that the bill of complaint is

fatally defective in its failure to make distinct averments as to the time when the fraud was discovered, and what the discovery was, in order that the court might clearly see whether, by ordinary diligence, the discovery might not have been made before.

In the case at bar, the bill of complaint is particular and definite upon this point. It shows the infancy and tender age of the children of George W. Remsen when the land warrant in question was issued. It shows the appointment of a guardian for them, and the attempted assignment of their rights under this warrant, without the authority of the Orphans' Court and in defiance of the Federal statute forbidding it. It shows that these children were in absolute ignorance of the transaction, and in absolute ignorance of the existence of any land warrant which had been issued to them, and in absolute ignorance of their right to receive such land warrant or any land warrant whatever; and that not until August in the year 1891 did they acquire any knowledge or information whatever of the facts in this bill set forth. That in that year they received information by letters from parties in the State of Minnesota, which led them to investigate, employ counsel and institute this suit. The evidence fully supports the allegations of the bill, and is credible and convincing.

Fourth. In *Felix* v. *Patrick*, it appears that Patrick was in possession of the land at the time when the patent was issued on July 3, 1863, and that he and those claiming under him have been in the adverse possession thereof ever since, a possession which, down to the filing of the bill in 1887, was for twenty-four years.

In the present case it appears from the evidence, that no possession was taken by Taylor or his grantees, until in 1862, when the M. & P. R. R. Co. laid tracks upon its right of way across a portion of the land.

In 1881 the Minnesota Transfer Company commenced operations thereon by laying tracks upon its right of way, and since then, by putting up freight houses and stock yards thereon.

In 1885 the rest of the land was platted, and in the following years houses were erected thereon.

Except as above stated, no possession was taken of the tract. This suit was commenced on May 28, 1892. So, with the exception of the right of way of the M. & P. R. R. Co., the land has not been in the possession, hostile or friendly, of any one for the statutory period of fifteen years.

There is only one point of similarity between the two cases. In both of them, has the land appreciated in value. The Court in *Felix* v. *Patrick*, say:

"That the real question is whether equity demands that a party who, twenty-eight years ago, was unlawfully deprived of a certificate or muniment of title of the value of $150, shall now be put in the possession of property admitted to be worth over a million. The disproportion is so great that the conscience is startled, and the inquiry is at once suggested, whether it can be possible that the defendant has been guilty of fraud so gross as to involve consequences so disastrous. In a court of equity, at least, the punishment should not be disproportionate to the offence, and the very magnitude of the consequences in this case demands of us that we should consider carefully the nature of the wrong done by the defendant in acquiring the title to these lands."

Ordinarily, a party recovers upon the strength of his own title, and not upon the weakness of that of his adversary. If the Felix heirs were entitled to recover the property which was the subject of that suit, it was because they were the equitable owners of it. Their equitable title was not affected by the appreciation or depreciation of the property in the hands of the constructive trustee, and their recovery would be adjudged by a court of law or of equity, simply as an act of justice to them, not as a punishment for an offence or wrong done by the defendant. All that is required of a plaintiff in a suit in equity is to come into court with a good cause and with clean hands. In such case the court is obliged to restore to him the property to which he is entitled, without regard to the inconvenience which the wrongful holder may suffer by having to surrender it; and this is done, not as a punishment to the wrong-doer, but simply by way of restitution to the true owner. The right of the Felix heirs to have Patrick declared their trustee did not depend upon Patrick's actual or moral fraud. They had the right to have the constructive trust set up, and the constructive trustee decreed to reconvey, even though that trustee had acquired the property by an innocent mistake, if it was inequitable for him to retain the property. The constructive trust may have for its basis merely a constructive fraud, with no moral guilt attached. A court of equity has no power to "punish" a wrong-doer, except as a necessary incident or consequence of its according to the plaintiff his equitable rights. The magnitude of the consequences in any case requires of the court that it shall carefully consider it, not with a view to fix a punishment proportionate to an offence, but to determine the civil rights of the parties to the controversy, and then to administer them. If a suitor's rights are to be determined, not by his title to the property, but by the amount of inconvenience which the wrong-doer will suffer by being required to give up what does not belong to him,

where shall the line be drawn? If the property has, by fortuitous circumstances, increased in value in the hands of the wrong-doer, fifty per cent, shall he surrender? but if 500 per cent., shall he be permitted to retain it? Does not this inquiry introduce into the administration of justice a novel principle? We do not question the propriety of requiring, in a case like the present, by a rigid rule, that the plaintiff shall establish his right, but having done so, ought the court to refuse to accord him justice because he has been fortunate in the appreciation of his property, and the defendant unfortunate in having to surrender that which he has for so many years enjoyed at the expense of the rightful owner?

It may be a hardship upon the persons in possession of the property to give it up. But they will not be obliged to surrender it unless they have taken it with actual or constructive notice of the plaintiffs' title. If by their own mistake or carelessness, they have failed to investigate the title before they purchased, their loss will be their misfortune, not the plaintiffs' fault, and the court cannot through sympathy relieve them from the consequences of their negligence.

The Court throws out, as an additional reason why the heirs of Sophia Felix should not be permitted to recover their own, the suggestion that if she had not been defrauded of her land scrip, but had located it herself, perhaps, or probably, she would not have realized a tithe of the sum that is now demanded of the defendants.

When a constructive trust is established, and the trustee, who is without moral guilt, is found to have made extraordinary profits out of the trust funds, was it ever before contended that he could escape the full measure of his responsibility to account for every dollar of the profits received by him, by the suggestion that, perhaps the fund in the owners' hands would not have been so remunerative? Besides, the trustee, by his wrongful and voluntary act, has deprived the owner of the chance of making the same profits.

The only cases cited by the court in *Felix* v. *Patrick* upon the laches feature, are *Wood* v. *Carpenter*, 101 U. S., 135, *Boyd* v. *Boyd*, 25 Ind., 429, *Wynne* v. *Cornelison*, 52 Ind., 312, and *Badger* v. *Badger*, 2 Wall, 92.

These cases are cited to sustain the proposition, that the bill is defective for failure to show how the fraud came to be discovered and why it was not discovered before, and because no acts of Patrick in this connection are averred in the bill to show that his concealment was more than that of silence, which is not enough. The case of *Wood* v. *Carpenter*, as well as *Boyd* v. *Boyd* and *Wynne* v. *Cornelison*,

arose under the statutes of Indiana. The statute of limitations relied upon by the defendants in each of those cases, declares:

"The following actions shall be commenced within six years after the cause of action has accrued, and not afterwards * * *. If any person liable to an action shall conceal the fact from the person entitled thereto, the action may be commenced at any time within the period of limitation after the discovery of the cause of action."

It is said that both of these provisions apply to actions for fraud.

In *Wood* v. *Carpenter* the concealment relied upon by the plaintiff to prevent the running of the statute is set forth in general terms, and with no specifications or details. It will be observed, that this statute, upon its face, requires an active concealment by the person liable, in order to prevent the bar of the statute. This case is a construction of the Indiana statute. It is no authority for a case arising under the statute of limitations of Minnesota, the terms of which are entirely different in this regard.

It has been held that the Minnesota statute applies to constructive fraud in cases where there was no active concealment of the facts.

In the complaint in *Wood* v. *Carpenter* there was no explanation of the plaintiff's failure to discover the alleged frauds at an earlier day, although it was evident that proper diligence could not have failed to unearth them. For this reason it was held that the action, which was a suit at law, was barred by the statute of limitations.

Boyd v. *Boyd*, 27 Indiana, 429, was an action to recover damages for fraud in exchange of lands. The answer set up the statute of limitations above quoted. The reply alleged that the defendant had concealed his liability to the action by certain false pretenses made by himself and certain misrepresentations which he induced others to make as to subsequent transactions, the actual truth of which would otherwise have been known to the plaintiff, and would have put him to inquiring, whereby he would have discovered the fraud; that thus deceived, he remained ignorant of the facts.

In this case, Frazier, Judge says:

"We agree with the counsel for the appellee, that the concealment *contemplated by the statute* must be something more than mere silence; that it must be an arrangement or contrivance to prevent subsequent recovery, and must be of an affirmative character."

It is plain therefore, that this case is simply a construction of the Indiana statute, which differs from the statute of Minnesota on the same subject.

In *Wynne* v. *Cornelison*, 52 Ind., 312 (cited in *Fetix* v. *Patrick*), it was decided that

"*The provision of the statute* that if a person liable to an action

shall conceal the fact from the knowledge of the person entitled thereto, the action may be commenced at any time within the period of limitation after the discovery of the cause of action, applies to causes of action for fraud as well as to other causes of action; but the concealment *contemplated by the statute* is something more than mere silence; it must be of an affirmative character, and must be alleged and proved so as to bring the case clearly within the meaning of the statute."

This case was likewise a construction of the statute of Indiana.

Badger v. *Badger* (cited in *Felix* v. *Patrick*) was a case in which a bill was filed against an administrator to obtain relief against fraud perpetrated in the course of administration. It appeared that the complainant might have discovered the alleged fraud at any time within thirty years before the bill was filed, even if he did not have actual knowledge thereof during that period.

His bill was fatally defective because he failed to set forth specifically what were the impediments to the earlier prosecution of his complaint, how he came to be so long ignorant, and how and when he first came to a knowledge of the matters alleged therein.

It may not be unprofitable for us to examine somewhat in detail, the opinions which have been rendered in this case, in the Circuit Court, and in the Circuit Court of Appeals. Judge Williams, District Judge, in the Circuit Court, decides for the defendants solely upon the question of laches, and bases his opinion upon the case of *Felix* v. *Patrick*, and especially upon that part of it which suggests the idea that a court of equity is one in which frauds are to be punished, not equity administered. He seems to think that the case at bar is a much stronger one than *Felix* v. *Patrick*, because in the latter case a scrip was obtained from the Indian woman by false representations and actual fraud, whereas in the case at bar the land warrant was purchased from the widow of the deceased soldier, as guardian of his minor children, and the whole value thereof was paid to her in money. His Honor overlooks the fact that unless she was authorized to sell, she had no right to receive the price of her children's property, and that a constructive trust is none the less enforceable because it originated in a constructive fraud in which there was no actual or moral guilt. If Taylor purchased the minors' interests in this warrant from a person who was not authorized by law to sell, he committed a legal wrong in so doing, and it is a constructive fraud for him, or his grantees with notice, to refuse to restore the property to the persons whose interests were thus illegally transferred.

His Honor says that the plaintiffs could at any time, by a simple

inquiry, have ascertained upon what lands the warrant was located, and thus have been able to institute this action within a reasonable time. But, he loses sight entirely of the fact that the plaintiffs never had the slightest knowledge or information of the existence of their equity to the land warrant in question, or to any other land warrant; so that there was absolutely nothing to prompt an inquiry by them; and under the circumstances it was morally impossible for them to have instituted the investigation. His Honor says, "Instead of doing that, however, they have allowed their rights, if they had any, and their claims, to remain dormant for nearly half a century, until the lands they now seek to obtain by this action are of the value of one million dollars, and the improvements upon them of the value of two million dollars." But his Honor forgets, that with no knowledge of the facts, the plaintiffs could not have done otherwise, and it is no fault of theirs, that the lands have increased in value, or that persons, who ought to have advised themselves of the true condition of the title before they purchased, have made valuable improvements thereon.

His Honor says that in this case, "the plaintiffs originally had no wrong to complain of. They received the full value of the land warrant, granted by the Governor to their ancestor for services in the war with Mexico." But there is no evidence of this. The testimony shows that Mrs. Remsen received $100 for making an unlawful assignment. There is no evidence that her children, ranging from 6 to 16 years old, received any money, or ratified her bargain. Some of them could not understand it at the time, and some of them, if not all, were never informed of it until shortly before the commencement of thisa ction. Under this authority, an infant would not be permitted in a court of equity to set aside the *unauthorized and illegal* sale of his land by a guardian, if it should be shown that the guardian received the value of the land. His Honor cites no case to sustain his decision but *Felix* v. *Patrick, supra*, which we have heretofore attempted to distinguish.

In the Circuit Court of Appeals, the opinion was delivered by Judge Thayer. He finds that Elizabeth Remsen, the guardian, "appears to have obtained no order from the Orphans' Court aforesaid, authorizing her to sell her children's interest in the land warrant." See record, page 356. Judge Thayer lays down the doctrine that the plea of laches does not always depend for its support upon mere lapse of time, but upon the manifest inequity of permitting the claim to be enforced in view of some change in the condition of the

property, or in the relation of the parties to the controversy. If Judge Thayer means by this to hold that property which is affected with a constructive trust, may not be followed, simply because it has increased in value, we take issue with him, and say that the doctrine is unjust, and unsupported by authority. But if he means to say that the rule requiring a suitor to plead or prove some adequate cause for his silence and inaction, in every instance where there has been an apparent want of diligence, is applied and enforced with great strictness in those cases where a person seeks to fasten upon another a constructive trust with respect to personal or real property, which has rapidly appreciated in value, or been improved by those in possession, or when the rights of innocent third parties have intervened and attached, we are not disposed to dispute the proposition.

His Honor says: "It is not claimed, however, that any fraud was practised upon the plaintiffs, or that knowledge of the issuance and sale of the land warrant was intentionally concealed from them with a view of preventing them from ascertaining their rights, either before or after they attained their majority."

We submit, under all the authorities, that a constructive trust may be built upon a constructive fraud, or what is equivalent thereto, an innocent mistake participated in by both parties, by which the one purchased from the other the land of an infant which in law she has no right to sell. In such a case, a constructive trust is raised in favor of the infant, without any actual fraud having been practiced by him. And in such case, the transaction may go upon the public records, so that it might be said that the sale of the land was not intentionally concealed from the infant, and yet a delay on the part of the infant, after attaining his majority, to enforce his rights, may be explained by showing that he was totally ignorant of those rights, without reference to the question whether any fraud has been practiced upon him, or the facts have been concealed from him by any one; and he may enforce the trust.

His Honor says: "Proceeding to consider this question, we may be permitted to intimate a serious doubt whether all or any of the minor heirs of George W. Remsen, who are represented in this action, were in fact ignorant of the issuance, sale and assignment of the land warrant by their mother and older sister when the sale was made."

In other words his Honor doubts—seriously doubts—whether the infant George W. A. Remsen, then six years old, was at that time ignorant of the issuance, sale and assignment of the land warrant; and so he doubts as to the ignorance of the other children, simply because they were living with their mother, although they have each

of them, who are now alive, solemnly testified that the first knowledge or information of the transaction came to them in 1889 and 1891. There is nothing in the testimony that makes it improbable that the children, who knew that their mother was in receipt of a pension on account of the services of their father, did not know the precise facts connected with her receipt of $100, if in truth they knew of it at all, or nid not know that it was not received on account of the aforesaid pension.

His Honor bases his judgment mainly upon the proposition that the minors, when they attained their majority, were all affected with knowledge of the law which granted to them and their mother 160 acres of land and entitled them to receive a warrant therefor from the Government, and that they must also be presumed to know whatever would have been discovered had they made use of the knowledge which they are presumed to have possessed. Laches involves the idea of carelessness, of neglect, of culpable neglect, of blame. There is no such thing as *innocent* laches. The penalty of laches is the loss of rights. The penalty ought not to be visited upon the plaintiffs, unless they were responsible for their actual ignorance of the Mexican land bounty law.

His Honor seems to think that if the rule of presumption can be invoked by the plaintiffs to affect the defendants with notice of the flaw in their title, it can with equal justice be invoked by the defendants in order to show that the plaintiffs were many years ago affected with knowledge of the law that should have put them upon inquiry. But the cases are very different. Under the rule of *caveat emptor*, a prudent man should always have the title to land, which he proposes to purchase, investigated. If he chooses not to do so, he must take the consequences. He is therefore presumed to know whatever the public records will disclose concerning the title to the land in question. This is a positive force that impels him to action, and he is blameable—culpable—if he disregards it. Not so with the man whose laches is constructed by the court upon a presumption on a presumption. The Remsen heirs are to be presumed to know the law, and they are to be presumed to have investigated all the facts relating to a right which they might have claimed under the said law, because they are presumed to know the law. There is, however, no active force impelling them to make the investigation. On the contrary, it would be folly to suppose that they had made or were bound to make, an investigation of a question to which they did not posses the faintest clue, and it would be gross injustice to withhold from them their rights because they did not

make an investigation, which, under the circumstances it was impossible for them to make.

His Honor says, that "the hand of the Chancellor will be stayed when to act would be to do an injustice." Of course that depends very much upon is considered to be an injustice. If to restore to the children of a Mexican soldier the bounty land which he earned with his life, and with which bounty land they have never parted, be an injustice, because the persons who have enjoyed the possession of the land for so long, will be inconvenienced or disturbed, then the hand of the Chancellor ought to be stayed

Upon this proposition, His Honor cites *Galliher* v. *Cadwell* 145 U.S., 368; *Felix* v. *Patrick*, 145 U. S., 317; *McKenny* v. *Bode*, 73 Minn., 450; and *Murphy* v. *Burk* 47 Minn., 99.

Galliher v. *Cadwell* does not sustain the proposition. In this case G made a homestead entry in Washington Territory in 1872. He died in 1873. The entry was cancelled in 1879 for want of final proof within the seven years. In 1880 the act of June 15, 1880, was passed, (21 Stat., 236, c. 227,) authorizing persons who had made homestead entries to entitle themselves to the lands on paying the Government price therefor. G's widow made application for a patent under this act, and her application was rejected. In 1881 W entered the tract, and in 1882 received a patent for it. In 1884 the widow made an application for a rehearing under the act of 1880, and her applicatian was rejected in the same year. The land having greatly increased in value by the growth of the city of Tacoma, C, claiming through conveyances from W, filed a bill to quiet title, making the widow a defendant. The widow answered, setting up as a prior right the homestead entry. It was held,

"(1) That it was doubtful whether the widow of G was entitled to the benefit of the Act of June 15 1880; but that, without deciding that question,

"(2) In view of the rapid and enormous increase in value of the tract, and *her knowledge of all the circumstances*, which must be assumed from her near residence to the property, a court of equity would not distub a title legally perfect, created by the General Government, after a decision adverse to any reservation of the homestead right, and on the faith of which costly improvements had been made.

Mrs. Galliher was plainly guilty of gross laches, which amounted to acquiescence, and Mr. Justice Brown says, at page 371:

"It is unnecessary to rest our decision upon these matters. The laches of the appellant is such as to defeat any rights which she

might have had, even if these prior questions were determined in her favor.

* * * * * * * * *

"The cases proceed on the assumption that the party to whom laches is imputed has knowledge of his rights, and an ample opportunity to establish them in the proper forum; that by reason of his delay the adverse party has good reason to believe that the alleged rights are worthless or have been abandoned; and that because of the change in the condition or relations during this period of delay, it would be an injustice to the latter to permit him to now assert them."

McKinny v. *Bode*, 33 Minn., 450, is cited in the opinion. The facts were as follows:

"At a sale of school lands in 1872 M. purchased a tract of such land, paid part of the purchase-price, and the interest on the remainder to the succeeding June, received the usual certificate, went into possession, built a house, paid the interest due June, 1873, and remained in possession till December, 1873, when he executed an assignment of the certificate to his wife, and abandoned the land and his wife and family, and never afterwards resumed possession, nor gave further attention to the matter. The wife and family remained in possession, and from December, 1873, a son who remained with his mother paid the taxes on the land and the interest on the unpaid purchase-money, for and on account of his mother, until her death, in 1880, and after her death for and on account of her estate, under license from the probate court sold and assigned the certificate to A. The latter thereupon paid to the land commissioner all arrears of principal and interest on the certificate, and a patent for the land was issued to him. *Held*, that although the assignment of the certificate to the wife was void, M. had at the time of issuing the patent no equity to the land as against A."

Mr. Chief Justice Gilfillan in this case said:

"He must show that he was equitably entitled to the land and to the issuance of a patent to him, so that the issuance of it to the patentee and the retention of the legal title and possession by the latter, operate as a fraud upon him. Otherwise, the legal title evidenced by the patent must prevail.

"Did this plaintiff show such superior equities? The bare statement of the foregoing facts indicates the proper answer. Seven years before the patent issued he abandoned the land and gave up the design to become himself entitled to a patent; abandoned, in fact if not in law, all interest in the matter. Had nothing been done but what he did, all rights under the certificate would have been forfeited six years before the patent issued. Others, by performing its conditions, kept it alive, not acting upon his procurement nor for him, nor intending what they did to be for his benefit, but acting in their own behalf, for their own interest, and upon the notion (grossly mistaking the law) that the legal interest in the certificate had passed by his assignment to Mrs. McKinney. And after

the patent was earned and issued he seeks to appropriate the benefit of what was done by those who earned it, taking his stand solely on the naked legal proposition that his attempted assignment to Mrs. McKinney was void. There is no equity in that."

This case does not support the opinion of the Circuit Court of Appeals.

Murphy v. *Burk*, 47 Minn., 99, decides, that after an abandonment by the holder of a certificate of school lands to all claim to the lands, for ten years, with a full knowledge of all the facts pertaining thereto, and an utter neglect, for more than ten years and until patent issued, to comply with the conditions of the certificate, the equity of the holder of the certificate is not superior to that of one who, under a void tax sale of the lands, complies with the requirements of the certificate, and so earns and receives the patents. The prior holder of the certificate has, by his conduct, misled the patentee, and is equitably estopped. The case is not distinguishable from the case of *McKenney* v. *Bode*.

His Honor says that "more than forty years ago the widow of George W. Remsen sold the land warrant in question for full value, and doubtless used the proceeds for the support and maintenance of her minor children. If she sold it without having the authority of the Orphans' Court, her action was due solely to a mistake of law. The testimony does not raise the slightest suspicion or attempt at concealment, either on her part or on the part of the purchaser."

In other words, if a mother, without any warrant of law, sells her children's land, they can never set aside the deed, if it can be shown that she received full value for it, or if it it can be shown that she used the proceeds in the performance of her obligation to support and maintain her children, or if in the absence of any evidence upon the point, the chancellor will assume it. They can never successfully attack the deed, if it can be shown that her action was due to a mistake of law. They can never recover their property in a court of equity, unless they can show that there was actual fraud in the transaction and an attempt at concealment of the facts from them.

His Honor says that "hundreds of people who were at least as innocent as these plaintiffs, have spent their money in purchasing portions of the property and improving it in divers and sundry ways"

If these people are equally innocent with the complainants —if their equities are equal, the legal title will prevail, and they

will retain the land. But we deny that they are equally innocent. The complainants have been guilty of no laches, because they could make no investigation in utter darkness. The defendants are to blame for not examining the public records, which contain proof of the infirmity of their title, and which were always open to them, and which, if examined, would have warned them of their danger.

In support of the rule requiring a suitor to plead some adequate excuse for his supposed laches, his Honor, Judge Thayer, in the Circuit Court of Appeals, cites the following cases:

Badger v. Badger, 2 Wall. 87, 95.
Godden v. Kimmell, 99 U. S., 201.
Galliher v. Cadwell, 145 U. S., 368.
Felix v. Patrick, 145 U. S., 317.
Lemoine v. Dunklin Co., 38 Fed. Rep., 567.
Railroad v. Sage, 49 Fed. Rep., 315.
Naddo v. Bardon, 51 Fed. Rep., 493.
Lemoine v. Dunklin Co., 51 Fed. Rep., 487.

All these cases have been considered in this argument, except that of *Lemoine* v. *Dunklin Co.*

We admit the existence of the rule, and its application to the present case.

In *Lemoine* v. *Dunklin County* 38 Fed. Rep., 567, the bill alleged the purchase of swamp lands from the defendant county thirty years before, the payment of the purchase price in full, and the issue of certificates entitling the holder to a patent from the Governor; and further averred the duty of the Governor to issue the patent until a short time afterwards, when power to issue patents was conferred on the county court, and the bill asked that the county be decreed to convey the legal title. It was held that the bill disclosed the relation of trustee and *cestui que trust* as to the legal title, and as there were no allegations concerning the possession, and it was not shown that the county had done anything in disaffirmance of the trust until a short time before suit, or that third persons had acquired intervening rights, the court could not declare on demurrer that complainant was barred by the statute of limitations, neither did the bill disclose such laches as will bar the right to relief. That whatever constructive possession the county may have by reason of its being vested with legal title does not bar complainant's right. Actual possession is necessary for that purpose.

His Honor, Judge Thayer, in delivering the opinion of the court, says:

"Various cases have been cited by defendants' counsel with a view of establishing that the cause of action is stale, but the Court has not been able to concur in that view. The case of *Speidel* v. *Henrici*, 120 U. S., 377, is first referred to. In that case the court found that the trustee proceeded against had affirmed the trust fifty years before the bill was filed. The bill showed that for that period the trustee had constantly avowed that he held the trust property upon a trust entirely different from that which complainants sought to establish and enforce. In other words, the case was decided on the theory that the trust had been disavowed for such a length of time that the complainant, who had knowledge of such disavowal, was barred of his right by laches. In the case of *Marsh* v. *Whitmore*, an effort was made to establish a constructive trust in personalty nearly twelve years after the transaction in which it arose. The bill did not state exactly when or how complainant became aware of the transaction out of which the trust arose, and it was accordingly held to be demurrable. The rule is well settled, of course, that a person who seeks to enforce a constructive trust, or obtain equitable relief on the ground of fraud, must act diligently on discovering the fraud or the transaction out of which the trust arises, as the trustee in such a trust always holds adversely to the beneficiary, and the right to pursue him may be easily lost by laches. The case of *Brown* v. *Buena Vista*, 95 U. S., 157, was a bill filed to set aside a judgment on the ground of fraud, and the proceeding was held to be barred by laches. The case is not important, except in so far as it shows, that in such cases, a complainant must act with commendable promptness after discovering the fraud. In the case of *Hume* v. *Beale*, 17 Wall, 347, a bill was filed to charge the estate of a trustee with a breach of trust committed thirty-seven years before the action was instituted. The breach of trust was known to the complainant many years, and it was for that reason held that equity would not grant relief. *Badger* v. *Badger*, 2 Wall, 92, was a case in which a bill was filed against an administrator to obtain relief against fraud, perpetrated in the course of administration. It appeared that the complainant might have discovered the alleged frauds at any time within thirty years before the bill was filed, even if he had not had actual knowledge thereof during that period, and the cause of action was accordingly adjudged to be stale. *Godden* v. *Kimmell*, 99 U. S., 201, is of the same general character as the case last mentioned.

This case was affirmed in *Lemoine* v. *Dunklin Co.*, 51 Fed. Rep., 487.

XII.

THE COMPLAINANTS WERE GUILTY OF NO LACHES AFTER DECEMBER, 1889.

This proposition has been considered somewhat in the foregoing argument. It is not necessary to repeat the facts bearing upon it. The inquiry here is as to laches properly so called, which means

a negligent delay to assert one's rights. The period between December, 1889, and the filing of the bill in any view is far short of the statutory period of limitation—six years after the discovery of the facts constituting the fraud. And it is pushing the doctrine of laches to an unwarrantable extent to hold that it is a bar short of the statutory period of limitation. It appears that no one has been prejudiced by the lapse of time since 1889; and a considerable portion of this time being necessary for the actual preparation of the bill. If, as held in the Sage case by the Circuit Court of Appeals, the State statute of limitations is binding on the Federal Court, the plaintiff must have six years to sue after discovery of the fraud, as he would have in the State courts.

XIII.

THE COMPLAINANTS ARE WILLING TO DO EQUITY.

Althongh improvements are not allowed where the defendants have knowledge or notice of claimant's right (Diffeback v. Hawke, 115 U. S., 407), complainants are advised that the question of assessment of improvements is not raised in the pleadings herein, but by agreement of counsel is to be considered only when raised under the Claimant Act of the State of Minnesota.

While the plaintiffs conceive that they are entitled to a decree in this suit declaring the trust which they have set up, requiring a reconveyance of all the property and an account of the rents and profits, they do here and now consent that each piece and parcel of land into which the 160 acres has been subdivided shall be charged in favor of the respective defendants claiming the same, with the value of all improvements placed thereon with interest, less a fair rental from the time when the respective improvements were placed thereon.

The decree should be reversed.

JOHN W. HINSDALE,
Solicitor and of Counsel for Appellants.

Raleigh, N. C., January 17, 1898.

NOTE—In the preparation of the foregoing argument I have made liberal of the able briefs of Messrs. C. W. Bunn and William C. Mayne.

J. W. H.

Office Supreme Court U. S.
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JAMES H. McKENNE
CLERK.

No. 94.
Sup. Brf. of Hinsdale for
Appellants.

Filed Feb. 5, 1898.

Supreme Court of the United States,

OCTOBER TERM, 1897.

No. 94.

ELIZABETH WETZEL ET AL., APPELLANTS,

vs.

THE MINNESOTA RAILWAY TRANSFER CO., ET AL.,

RESPONDENTS.

SUPPLEMENTAL BRIEF

OF

JOHN W. HINSDALE,

OF COUNSEL FOR APPELLANTS.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1897.

No. 94.

ELIZABETH WETZEL ET AL., APPELLANTS,
against
THE MINNESOTA TRANSFER RAILWAY ET AL.,
RESPONDENTS.

Supplemental Brief of Counsel for Appellants.

XIV.

THERE IS NO PRESUMPTION OF LAW THAT THE MINOR CHILDREN OF GEORGE W. REMSEN, UPON ATTAINING THEIR MAJORITY, KNEW OF THE ACT OF CONGRESS OF FEBRUARY 11, 1847, AND OF THEIR RIGHTS THEREUNDER.

The learned counsel for the respondents argue that all men are presumed to know the law; and that, therefore, the minor children of George W. Remsen, when they respectively became of age, knew that from seven to fifteen years prior thereto and while they were infants, there was in force an act of congress, which entitled their father and themselves to claim a land warrant for 160 acres of land; and that they and their children, who are the complainants, are guilty of culpable negligence, or laches, in not making an investigation of their rights in the premises at an earlier day, although they were totally and inevitably ignorant of them until shortly before this suit was instituted.

The learned counsel by their argument admit that it is necessary for them to show laches in the complainants, for that lapse of time, *without laches* will not avail them in a court of equity, especially when there is no adverse possession for over 13 years (less than the statutory period to bar an action for the recovery of real estate in Minnesota)

except as to a strip of land over sixty acres of the tract, known as the right-of-way of the Minnesota and Pacific Railroad Company.

This court, in every case of laches which has ever come before it, might have disposed of it very summarily if the sheer lapse of time, unaccompanied by laches, was sufficient to bar the rights of the claimants. But in every case the court carefully points out the negligence of the delay and the fact of long knowledge of his rights by the complainant.

The counsel with all their ability and industry fail to cite a single authority to sustain the position, that lapse of time without laches will bar the rights of the complainants in an equitable jurisdiction. Hence the earnestness with which they invoke that fiction "that every man is presumed to know the law."

The counsel rely upon the maxim, "*ignorantia legis neminem excusat.*" But it has no application in the present case. The maxim is accurately stated, "ignorance of the law excuses no one," not "every man is presumed to know the law," and the statement of the maxim indicates its limitations.

Mr. Lawson in his work on Presumptive Evidence, on page 5, states the rule with technical precision. He says:

"*Every one is presumed to know the law when ignorance of it would relieve from the consequences of a crime or from liability upon a contract.*

Laing v. Colder, 8 Pa. St., 479; 49 Am. Dec., 533 (1848).
Kay v. Connor, 8 Humph., 624; 49 Am. Dec., 690 (1848).
Cluff v. Mutual Benefit Life Ins. Co., 13 Allen, 308 (1866).
Sherrill v. Hopkins, 1 Cow., 103 (1823).
Gast v. Drakely, 2 Gill, 330 (1844).
Oilex v. Gard, 23 Ind., 212 (1864).
Brown v. Beers, 6 Conn., 213 (1826).
Cockayne v. Summer, 22 Pick., 117 (1839).)

"The presumption that every person knows the law is often spoken of, but it is clear that there is no such general presumption. When Mr. Dunning, in arguing before Lord Mansfield, said: 'The laws of this country are clear, evident and certain; all the judges know the laws, and knowing them administer justice with uprightness and integrity,' that learned judge replied: 'As to the certainty of the law mentioned by Mr. Dunning, it would be very hard upon the profession if the law was so certain that everybody knew it; the misfortune is that it is so uncertain that it costs much money to know what it is, even in the last resort.'

Jones v. Randall, Cowp., 38."

Mr. Jones in his Law of Evidence, Vol. 1, p. 44, sec. 20, gives the *raison d'etre* of the rule, which shows its limitation, and confirms the view of Mr. Lawson. In its application to the case at bar the reason of the rule fails, and the rule fails with it. Mr. Jones says:

"The maxim, *ignorantia juris non excusat*, is based on the fact that there could be no successful administration of justice if the converse of the rule were tc prevail. If prisoners accused of crime could successfully plead that they were ignorant of the illegality of their acts, no other shield for crime would need to be interposed; for no other defense could be so easily raised or so difficult to overcome. If ignorance of the law was admitted as a ground of exception, the court would be involved in questions which it were scarcely possible to solve and which would render the administration of justice next to impossible; for in almost every case ignorance of law would be alleged and the court would, for the purpose of determining this point, be often compelled to enter upon questions of fact insoluble and indeterminable."

"Although it has been sometimes stated that the rule has no application except in criminal cases, there seems to be no good reason for confining the rule to the criminal law. The same considerations which forbid a party to urge his ignorance of the law as a defense to a criminal charge also forbid that he should plead his ignorance of the law as an excuse for the failure to comply with contract obligations or as a defense in actions of tort. Accordingly in actions for false imprisonment officers cannot defend on the ground that they had supposed void writs to be valid."

Mr. Wharton in his Law of Evidence, Vol. 2, at page 375, sec. 1240 discussing this maxim, says:

"That the axiom contains an untruth is conceded. No man in a civilized community knows the law either intensively or extensively; there is no thinker, no matter how profound, who has not left some depths unfathomed; no reader, no matter how omnivorous, who has not left some details untouched. To predicate that of the ignorant which cannot be predicated of the learned specialist is absurd.

"Besides," objects Mr. Livingston, in his Report on the Louisiana Penal Code, "is it not mockery to refer me to the common law of England? Where am I to find it? Who is to interpret it for me? If I should apply to a lawyer for a book that contained it, he would smile at my ignorance, and, pointing to about five hundred volumes on his shelves, would tell me those contained a small part of it; that the rest was either unwritten or might be found in books that were in London or New York, or that they were shut up in the breasts of the judges at Westminister Hall. If I should ask him to examine his books and give me the information which the law itself ought to have afforded, he would hint that he lived by his profession, and that the knowledge he had acquired by hard study for many years could not be gratuitously imparted. Your law, therefore, I repeat,

is absurd in its consequences if taken literally, and mocks us by a reference to an inaccessible source for an explanation of its obscurities."

"But, predicated it is both of ignorant and learned, *so far as to establish the conclusion that no one is allowed to set up ignorance of law as an excuse for wrong.* For this several reasons are given. Mr. Austin inclines to think that the law refuses to recognize ignorance of the law as a defence, because it has no test by which ignorance of law can be measured. Who can tell whether, in any given case, such ignorance exists? Who can tell whether such ignorance is inevitable? Pascal argues that society would be destroyed if such an excuse were held good.

"It must be remembered at the same time that the knowledge of law, which is here assumed, is simply practical knowledge, commensurate with the duties whose non-discharge the law, in the concrete case, condems. A person who *commits a public wrong* for instance, is bound to know that the wrong is subject to penal consequences: if it is *malum in se* his natural consciousness points to this, and it would be fatal to government to allow want of such natural consciousness to be a defence; if it is *malum prohibitum*, it should be known by him, for it his duty, when he undertakes to abide in a community, to *know what it prohibits*, since otherwise no police law could be enforced. But when questions of construction of documents come up, then, as we will hereafter see more fully, a party cannot be always held liable civilly for adopting a probable construction which the courts may ultimately hold to be erroneous.

"But that a persom who is *capax negotii* should set up ignorance of fact as ground of exculpation or of defence, would be against the policy of the law; and hence, where there is no fraud or coercion, the law treats him as if he were *cognizant of what he did. He is not supposed to have known facts of which it appears he was ignorant; but if his ignorance is negligent or culpable, then the law declares it cannot protect him.*"

Mr. Wharton in his work on Criminal Evidence, at Sec. 723, page 580, says:

"That knowledge of the law, on the part of all persons *charged with crime*, is *so* far presumed that *they* cannot set up ignorance of the law as *a defence*, is an axiom of jurisprudence. That the axiom contains an untruth is conceded."

R. v. Price, 3 P. & D., 421; S. C., 11 A. & E., 727.
Middleton v. Croft, Str., 1056.
R. v. Esop, 7 C. & P., 456.
R. v. Good, 1 C. & K., 185.
Stokes v. Salmons, 9 Hare, 79.
R. v. Hoatson, 2 C. & K., 777.
R. v. Bailey, R. & R., 1.

Stockdale v. Hansard, 9 A. & E., 131.
Barronet's case, 1 E. & B., 1.
U. S. v. Learned, 11 Int. Rev. Rep., 149.
The Ann, 1 Gallis, 62.
U. S. v. Anthony, 11 Blatch., 200.
Cambioso v. Maffett, 2 Wash. C. C., 98.
Com. v. Bagley, 7 Pick., 279.
Hamilton v. People, 57 Barb., 625.
State v, Hart, 6 Jones (N. C.), 389.
McGuire v. State, 7 Humph., 54.
Winehart v. State, 6 Ind., 30.
Black v. Ward, 27 Mich., 191.
Whitton v. State, 37 Miss., 379.
Chaplin v. State, 7 Tex. Ap., 87.

Mr. Wharton in his Law of Negligence at Sec. 411, page 346, says:

"That the law of the land is known by all subjects is a postulate often assumed to establish the conclusion that persons are liable for the *consequences of a negligent mistake of law.* But this postulate, although accepted as *legal fiction,* is so *preposterously false* in fact that juries will not readily adopt it as a meritorious basis of a suit.

"The most eminent and experienced judges, for instance, when called upon to act without study or counsel in their private business (e. g., as in making of their own wills,) show, by their blunders and inadvertencies, that there is no man who, in the ordinary affairs of life, can possess himself of the laws of the land, except by deliberation and study. The reason for this is to be found not merely in the incapacity of the actor himself, but in the character of the law, of which he is supposed to be master. For that law is not only so extensive, viewing it in all its branches, as to exceed the bounds of ordinary comprehension, but is so progressive as to involve conclusions as yet imperfectly expressed. The idea of Blackstone, that the common law of England consists of a fund of established though unwritten jurisprudence, from which each judge draws what is necessary for every litigated case, is now universally dismissed as incorrect. By each new decision the law as previously announced is extended. By many new decisions the law as previously announced is overruled. In many new cases the law penetrates to new fields, invoking for them new rules. The law applicable to multitudes of combinations of acts, therefore, is a law which is not determined until those particular combinations of acts are specifically judicially scanned; and even then we cannot be certain what this law is until it has been affirmed by the highest territorial court having jurisdiction.

"It is *necessary to society* that ignorance of the law should be no excuse for an act the law pronounces *to be unlawful;* because igno-

rance of the law is a subject which the courts have no capacity to determine. This is the position taken by Mr. Austin, in those lectures which form the most philosophical treatise on general jurisprudence which has as yet sprung from English pen, 'The *only sufficient reason for the rule* in question,' he declares, 'seems to be this: that if ignorance of the law were admitted as a ground of exemption, the courts would be involved in questions which it were scarcely possible to solve, and which would render the administration of justice next to impracticable. If ignorance of law were admitted as ground for exemption, ignorance of law would always be alleged by the party, and the court, in every case, would be bound to decide the point. But in order that the court might decide the point, it were incumbent upon the court to examine the following questions of fact: 1st. Was the party ignorant of the law at the time of the alleged wrong? 2d. Assuming that he was ignorant of the law at the time of the wrong alleged, was his ignorance of the law inevitable ignorance, or had he previously been placed in such a position that he might have known the law, if he had duly tried? It is manifest that the latter question is not less material than the former. * * * Now, either of these questions were next to insoluble. Whether the party was really ignorant of the law, and was so ignorant of the law that he had no surmise of its provisions, could scarcely be determined by any evidence accessible to others. And for the purpose of determining the cause of his ignorance (its reality being ascertained), it was incumbent upon the tribunal to unravel his previous history, and to search his whole life for the elements of a just solution. The reason for the rule in question would, therefore, seem to be this: It not unfrequently happens that the party is ignorant of the law, and that his ignorance is inevitable. But if ignorance of law were a ground for exemption, the administration of justice would be arrested; for, in almost every case, ignorance of the law would be alleged. And, for the purpose of determining the reality and ascertaining the cause of his ignorance, the court were compelled to enter upon questions of fact, insoluble and indeterminable.' But however strong this position may have been in Mr, Austin's time, it has lost its force since the passage of statutes by which parties can be examined as to their motives, their knowledge, and their ignorance. Ignorance of the law is now as capable of proof as is any other mental state. *The safety of society would be endangered if ignorance of the law were a legal excuse far an illegal act.*"

Mr. Broom in his Legal Maxims at page 253 says:

"With respect to the 'presumption of legal knowledge' here spoken of, we may observe, that, although ignorance of the law does not excuse persons, so as to exempt them from the consequences of *their acts*, as, for example, from punishment for a *criminal offence*, or damages for *a breach of contract*, the law nevertheless takes notice that there may be a doubtful point of law, and that a person may be ignorant of the law, and it is quite evident that ignorance of the law does in reality exist. It would, for instance, be contrary to common

sense to assert that every person is acquainted with the practice of the courts; although, in such case, there is a presumption of knowledge to this extent, that *ignorantia juris non excusat*, the rules of practice must be observed, and any deviation from them will entail consequences detrimental to the suitor. It is, therefore, in the above qualified sense alone that the saying, 'that all men are presumed cognizant of the law,' must be understood."

And at page 263, "It is laid down as a general proposition, that in courts of equity the ignorance of the law shall not affect *agreements*, nor excuse from the legal consequences of *particular acts*, and this rule, as observed by Mr. J. Story, is fully borne out by the authorities."

And at page 267, "Lastly, every man is presumed to be cognizant of the statute law of this realm, and to construe it aright; and if any individual *should infringe it through ignorance*, he must, nevertheless, abide by the consequences of his error. It will not be competent to him to aver, in a court of justice, that he has mistaken the law, this being a *plea* which no court of justice is at liberty to receive."

Mr. Bouvier, in the last edition of his Law Dictionary, at page 978, says:

"The subject may be well summed up by the collation of two or three cases which show the substantial uniformity of the application of the doctrine. 'The maxim *ignorantia legis neminem excusat* is not universally applicable, but only when *damages* have been inflicted or *crimes committed*. It is true that the law will not permit the excuse of ignorance of the law to be pleaded for the purpose of exempting persons from damages for a *breach of contract*, or from punishment for *crimes committed* by them, but on other occasions and for other purposes, it is evident that the fact that such ignorance existed will sometimes be recognized so as to affect a judicial decision." 44 N. J. L, 244. And, 'There is no maxim which says that for all intents and purposes a person must be taken to know the legal consequence of his acts.' Lush, J., in L. R., 3 Q. B., 639. 'It would be too much to impute knowledge of this rule of equity'" (the doctrine of election). Westbury, Ld. Ch., in 11 H. L. Cas., 602."

Mr. Lawson in his Presumptive Evidence, page 13, says:

"The presumption of knowledge of law may be rebutted. 'For instance, if there be an intention to pass a freehold estate, and the vendee accepts a deed of feoffment without livery, he will be relieved upon the ground that he was under a mistake as to the law, for the intention being clear the failure to effect it makes the mistake manifest, and rebuts the presumption.'"

Folger, J., in *People* v. *Clute*, 50 N. Y., 463, speaking of the maxim "*ignorantia juris excusat neminem*," said:

"That maxim in its proper application goes to the length of denying to the *offender* against the criminal law a justification in his

ignorance thereof, or to one liable for a *breach of contract*, or for *civil tort*, the excuse that he did not know of the rule which fixes his liability.

"The maxim itself concedes that there may be a lack of actual knowledge of the law. For it is ignorance of it which shall not excuse. Then the knowledge of the law to which one is held is a *theoretical* knowledge."

In *Adair* v. *Brimmer*, 74 New York, 553, Rapallo, J., says:

"The testimony as to a ratification of these transactions is contradicted by the contestants, and the auditor has found against such ratification. We concur in his conclusion. To establish a ratification by a *cestui que trust*, the fact must not only be clearly proved, but it must be shown that the ratification was made with a *full knowledge* of all the material particulars and circumstances, and also in a case like the present that the *cestui que trust* was fully apprised of the effect of the acts ratified, and of his or her *legal rights* in the matter. Confirmation and ratification imply to legal minds knowlelge of a defect in the act to be confirmed, and of the right to reject or ratify it. The *cestui que trust* must therefore not only have been acquainted with the facts, but apprised of the law how these facts would be dealt with by a court of equity. All that is implied in the act of ratification, when set up in equity by a trustee against his *cestui que trust*, must be proved, and will not be assumed. The maxim '*ignorantia legis excusat neminem*,' cannot be invoked in such a case. The *cestui que trust* must be shown to have been apprised of his legal rights.

Cumberland Coal Co. v. Sherman, 20 Md. R., 151.

S. C., 30 Barb., 575.

Lammott v. Bowley, 6 H. & J., 526."

If in a case of ratification, this maxim cannot be invoked, why should it be applicable to a case of acquiesence or of laches?

In *Harr* v. *Roper*, 6 Ired. Eq., N. C., 349, it is said:

"The maxim, '*ignorantia legis neminem excusat*,' is founded upon the presumption that every one, competent to act for himself, knows the law, but the presumption that he knows it is not conclusive, but may be rebutted. Therefore, when a plaintiff alleges in his bill that he was ignorant of the law, and the defendant demurs, it seems hat the latter cannot take advantage of the maxim."

The conclusion to be fairly drawn from the foregoing authorities is, that the maxim, "ignorance of the law excuses no one," arose from the necessity of the case. Without it there could be no proper administration of the civil or criminal law. It has no application to the case at bar, because the reason for the maxim has failed. So

long as a man is quiescent, no knowledge of the law is imputed to him. But, when he takes a positive step, he must be sure of his ground, or accept the consequences of his ignorance. The maxim may be invoked only by those to whom one owes a duty. The State may invoke it, when its criminal law has been broken. A party to a contract may invoke it, when the other party has violated the contract. One who has suffered an injury may invoke it as against the wrong-doer. But, a trespasser, or a constructive trustee, cannot retain the property of another on the ground that the owner thereof has remained in inevitable ignorance of his rights until just before his application for relief to a court of equity. When one has *acted* to the prejudice of another, his ignorance of the law is no excuse But in the case at bar, the complainants have not acted to the prejudice of any one. They have not acted at all. They have not laid themselves liable for the breach of any law in their failure to know that congress passed the act of February 11th, 1847. They have no sin in this regard from which to ask absolution, nor is there any one to whom they should apply for pardon. They were under no duty to the persons who have taken possession of their lands to know of the act of congress which entitled them to a land warrant. There were no relations, contractual or social, between them and the wrong-doers, which gave the latter the right to invoke this legal fiction in their favor, and to complain of the ignorance of the complainants in a matter which did not concern them.

XV.

NO ONE IS BOUND TO MAKE INQUIRY WHO HAS NO NOTICE EITHER OF THE SUBJECT OF INQUIRY, OR OF ANY FACT WHICH SUGGESTS IT.

The notice which imposes the duty of investigation is the notice of a *fact*. The *actual* knowledge of a *fact*, and not the presumption of knowledge of a law out of which a right may possibly arise, imposes the duty of inquiry.

The learned counsel have failed to cite a single case in which such presumption has been regarded as equivalent to the actual knowledge of the fact.

It would seem to be a strange proposition, that the presumption that the minor children of Geo. W. Remsen knew of the act of congress of Feb. 11, 1847, of which they in fact had no knowledge, must stimulate them to inquiry. Their inevitable ignorance of the law

must be taken as positive knowledge, upon which they must make an investigation, without a starting point, without a clue, without any notice even of the subject which they are to investigate! And the failure to accomplish such an impossibility is to entail upon them the loss of their inheritance! These are hard lines for the children and grandchildren of a soldier who gave his life to his country.

The following authorities indicate that it is *knowledge of a fact* that necessitates further inquiry:

"Generally one is charged with notice of a fact *who has information* putting him on inquiry, if by following up such information with diligence and understanding the truth could have been ascertained."

Jennings v. Todd, 40 Am. St. Rep., 373.

"A purchaser who had *knowledge of a fact* sufficient to put him to inquiry, is presumed to have made inquiry, and is chargeable with notice of whatever it appears he could have ascertained by the inquiry upon which the circumstances should have put him."

Reed v. Gannon, 50 N. Y., 345, rev'g 3 Daly, 414.
Cordova v. Hood, 17 Wall, 1.
Maxfield v. Burton, L. R. 17 Eq., 15, s. c. 7 Moak's Eng., 642.

"One is chargeable with actual notice of facts if he *has knowledge of such facts* as would lead a fair and prudent man to make further inquiries, and if such inquiries, if pursued with ordinary diligence would have given him knowledge of the facts with notice of which he is sought to be charged."

Knapp v. Bailey, 79 Me., 195; 1 Am. St. Rep., 295, and note 300

"Purchaser has notice of not only facts definitely communicated to him, but of all facts which the proper use of that *information* with ordinary diligence and prudence would enable him to ascertain."

Oliver v. Sanborn, 60 Mich., 346.
Gaines v. Summens, 50 Ark., 322.

"It is a rule of frequent application, that one who *has knowledge of facts* sufficient to excite the inquiry of a prudent man in regard to other facts, will be charged with knowledge of such other facts as might have been learned by diligence. *This knowledge* exciting inquiry is called by some of the authorities actual notice, and by

others constructive notice. In either instance, it is equivalent to actual notice as one who has it is affected with the same liabilities as one having actual notice; constructive notice being evidence of notice which the policy of law does not permit to be controverted, and *actual notice being express, direct information of a fact.* Within the meaning of the rule, "circumstances putting one on inquiry" refers to such circumstances as necessarily lead to an acquaintance with the truth. As is concluded by Judge Selden after a lengthy opinion: "The true doctrine on this subject is that where a purchaser *has knowledge of any fact* sufficient to put him on inquiry as to the existence of some right or title in conflict with that he is about to purchase, he is presumed either to have made the inquiry and ascertained the extent of such prior right, or to have been guilty of a degree of negligence equally fatal to his claim to be considered as a *bona fide* purchaser. This presumption, however, is a mere inference of fact, and may be repelled by proof that the purchaser failed to discover the prior right, notwithstanding the exercise of proper diligence on his part."

Lodge *v.* Simonton (2 P. & W., 439), 23 Am. Dec, 47.

"To charge a party with notice of fraud, it is not necessary that he should have actual notice, if he is chargeable with constructive notice; and this may be inferred from *the knowledge of suggestive facts*, which, if followed up, would have led to a discovery of the fraud; that is, *facts* of unusual or suspicious nature, *having reference to the transaction sought to be impeached*, and so related to it, that, if faithfully pursued and inquired into, they would have discovered its true character."

Hodges v. Coleman, 76 Ala., 103.

"Where a subsequent purchaser *has actual notice* that the property is encumbered or affected, he is charged constructively with notice of all the facts and instruments to the knowledge of which he would have been led."

Crumlish v. R. R. Co., 32 W. Va., 245.

"What is sufficient to put a person on inquiry is good notice; that is, where a man *has sufficient information* to lead him to a fact, he shall be deemed cognizant of it. Mere rumor or a suspicion of a defective title is not sufficient to operate as constructive notice."

Parker v. Kane, 4 Wis., 11.

"*Information given* to a purchaser which ought to have put him on an inquiry, will be considered as sufficient notice."

Price v. McDonald, 1 Md., 403.

"Notice is either actual or constructive. Actual notice consists in express information of a fact. Constructive notice is notice implied by

the law to a person not having actual notice; and every person who has *actual notice of circumstances sufficient* to put a prudent man upon inquiry as to a particular fact, and who omits to make such inquiry with reasonable diligence, is deemed to have constructive notice of the fact itself."

Gress v. Evans, 1 Dakota, 387.

"When stock is offered for sale to an officer of a company, by one holding written authority of the character above indicated, there is no rule of law which requires him to inquire the purpose of the sale. He would only be put upon inquiry *when he has knowledge of such facts* as would lead an honest man, using ordinary caution, to make further inquiries, and be taken to have notice of facts about which inquiries should be made, when *with such knowledge* he does not make the inquiry but avoids making it."

Foster v. Ambler, 24 Fla., 520.

"What is sufficient to put a person on inquiry is not necessarily sufficient to charge him with notice. *The fact brought to his knowledge* must be sufficient to put him on inquiry, and the inquiry, if followed up, must reasonably lead to knowledge or notice of the fact sought to be imputed."

Thompkins v. Henderson, 83 Ala., 391.

"A person is not chargeable with notice of a fact, because reasonable inquiry on his part would disclose its existence unless the law casts on him the duty of making such inquiry and this duty only arises when he *has had knowledge of other facts* reasonably contemplated to awaken suspicion."

Kyle v. Ward, 81 Ala., 120.

"Whatever is enough to excite attention, or put a party on inquiry, is notice of everything to which such attention or inquiry might reasonably lead. *Sufficient information* to lead to the knowledge of a fact, shall be sufficient to charge him with the knowledge of that fact."

Parker v. Foy, 45 Miss., 260.

"*Notice of facts* which are sufficient to put the purchaser on inquiry is equivalent to actual notice of the facts which he would have discovered by proper inquiry."

Boggs v. Price, 65 Ala., 514.

"Where one *has notice of an opposing claim*, he is put upon inquiry and is presumed to have notice of everything which a proper inquiry would have enabled him to discover."

Blackwood v. Jones, 4 Jones' Equity (N. C.), 54.

In the above case, Selden, J., says on page 360:

"In *Whitbread* v. *Boulnois* (*supra*), Baron Alderson laid down the rule as follows: 'When a party *having knowledge of such facts* as would lead any honest man using ordinary caution, to make further inquiries, does not make, but on the contrary studiously avoids making such obvious inquiries, he must be taken to have notice of those facts, which, if he had used such ordinary diligence, he would readily have ascertained. This very plainly implies that proof that the party has used due diligence, but without effect, would repel the presumption. In this case, it is true, the decision was against the party having the notice. But in *Jones* v. *Smith* (1 Hare, 43), we have a case in which a party, who *had knowledge* sufficient to put him on inquiry, was nevertheless held not bound by the notice."

"One who is put upon inquiry by certain *facts within his knowledge* is affected with notice of everything that such inquiry would have discovered."

May v. Hanks, Phillips' Eq. (N. C.), 310.

Whatever puts a party upon inquiry amounts to notice, provided the inquiry becomes a duty and would lead to the knowledge of the requisite fact by ordinary diligence and understanding.

General rumor of the fact is not sufficient to place a party on inquiry. There must be *some act or declaration from an authentic source* which a person would be careless if he disregarded.

Maul v. Rider, 59 Pa. St., 167.

"Notice is actual when one either has knowledge of a fact, or is *conscious of having the means of knowledge*, although he may not use them. Actual notice may be divided into express and implied. The implication of notice arises when the party to be charged is shown to have knowledge of such facts and circumstances that would lead him, by the exercise of due diligence, to a knowledge of principal facts. The doctrine of actual notice implied by circumstances (actual notice in the second degree) necessarily involves the rule that a purchaser before buying should clear up all doubts which apparently hangs upon the title, by making due inquiry and investigation. If a party *has knowledge of such facts* as would lead fair and prudent men using ordinary caution to make further inquiry, and he avoids the inquiry, he is chargeable with notice of the facts which by ordinary diligence he would have ascertained. He has no right to shut his eyes against the light before him. He does a wrong not to heed the *sign and signal seen* by him. It may be well concluded that he is avoiding notice of that which he really believes or knows. *Actual notice of facts* which to the mind of a prudent man indicates notice is proof of notice."

Camp v. Bailey, 79 Me., 195.

"There must appear to be, in the nature of the case, such connection between *the facts discovered* and the further facts to be discovered, that the former may be said to furnish a clue, a reasonable and natural clue to the latter."

Birdsall v. Russell, 29 N. Y., 249.
Page v. Warning, 76 N. Y., 463.
Chaflin v. Lenheim, 66 N. Y., 306.
Williamson v. Brown, 15 N. Y., 354.
Cambridge Valley Bank v. Delano, 48 N. Y., 323.
Booth v. Barnum, 9 Conn., 286; s. c., 23 Am. Dec., 339.
French v. Layal Land Co., 5 Leigh Va., 627.

"The principle of constructive notice is always resorted to in order to prevent the person having it from *doing an act to the injury* of another, and does not apply where the question is whether one was barred by his assent to a fraud practiced on him."

Spencer v. Spencer, 3 Jones Eq.. N, C., 404.

"*Information* which makes it the duty of a party to make inquiry, and shows where it may be effectually made, is notice of all facts to which such inquiry might have led. But a party thus put on inquiry, is to be allowed a reasonable time to make it before he is affected with notice.

Carr v. Hilton, 1 Curtis (U. S.), 390.

In the above case, Curtis, J., says, page 393:

"The rule respecting notice is well settled. It is correctly laid down in *Kennedy* v. *Green*. 3 N. Y., & K., 719, 721, 722. 'It is the well established principle, that *whatever is notice enough to* excite attention, and put the party upon his guard, and call for inquiry, is notice of everything to which such inquiry might have led. When a person *has sufficient information* to lead him to a fact, he shall be deemed conversant of it.' In support of this, many cases may be cited. It will be sufficient to refer to a few of them: *The Ploughboy*, 1 Gallis, 41; *Hinde* v. *Vattier*, 1 McLean, 118; *Bowman* v. *Wathen*, 2 McLean, 376; Sugden on Ven. & Pur., 1052, and cases there cited."

In *Williamson* v. *Brown* (15 N. Y., 334), the rule is stated by Selden, J., at page 362, as follows:

"The true doctrine on this subject is that where a purchaser has *knowledge* of *any fact* sufficient to put him on inquiry as to the existence of some right or title in conflict with that he is about to purchase, he is presumed either to have made the inquiry and ascertained the extent of such prior right, or to have been guilty of negligence equally fatal to his claim to be considered as a *bona fide* purchaser."

And Paige, J., in the same case, states the rule as follows:

"A party *in possession of certain information* will be chargeable with a knowledge of all facts which an inquiry suggested by such information, prosecuted with due diligence, would have disclosed to him." Citing as authority *Howard Ins. Co.* v. *Halsey*, 4 Sandf. Sup. Ct., 578; *Kennedy* v. *Green*, 3 Mylne. and Kees., 699.

In *Flagg* v. *Mann et al.* (2 Sumner, 554), Story, J., states the rule as follows:

"If he does not inquire he is bound in the same manner as if he had inquired and had positive notice of the title of the party in possession. A purchaser who has *notice of such facts* as, with ordinary diligence, would lead him to a full knowledge of an outstanding equity, is a purchaser with notice."

Hinde v. Vattier, 1 McLean (U. S.), 110.

The learned counsel argue that the complainants are presumed to have investigated and discovered the defendants' claims, because the former are presumed to know of the act of congress of February 11, 1847, under which their rights arose.

This is a presumption upon a presumption, which is not favored.

"Inferences from inferences are not permitted—only immediate inferences from facts proved. If the presumed fact has no immediate connection with or relation to the established fact from which it is inferred, it is regarded as too remote. Thus, the presumption that a public officer has done his duty does not supply proof of independent and substantial facts."

United States v. Ross, 92 U. S., 283, 284.

Grand Trunk R. Co. v. Richardson, 91 U. S., 470.

"A judge in deciding that evidence of a particular circumstance is not receivable impliedly decides that no presumption can be drawn from it which ought to have effect with the jury. A presumption which the jury is to draw is not a circumstance in proof, and it is not, therefore, a legitimate foundation for a presumption. There is no 'open and visible connection' between the facts out of which the two presumptions arise."

McAleer v. McMurray, 58 Pa., 126.

"An inference from an inference, if allowed at all, has little probative force."

Ayer v. Steamer Glaucus, 4 Cliff., 171.

"A presumption cannot be based upon a presumption, for there is no open and visible connection between the facts out of which the

first presumption arises and the facts sought to be established by the dependent presumption."

"Such a mode of arriving at a conclusion of fact is generally, if not universally, inadmissible. No inference of fact or of law is reliable drawn from premises which are uncertain. Whenever circumstantial evidence is relied upon to prove a fact, the circumstances must be proved, and not themselves presumed.

"Starkie on Evidence, p. 80 lays down the rule thus: 'In the first place, as the very foundation of indirect evidence is the establishment of one or more facts from which the inference is sought to be made, the law requires that the latter should be established by *direct* evidence, as if they were the very facts in issue.' It is upon this principle that courts are daily called upon to exclude evidence as too remote for the consideration of the jury. The law requires an open, visible connection between the principal and evidentiary facts and the deductions from them, and does not permit a decision to be made on remote inferences. (Best on Evid., 95.) A presumption which the jury is to make is not a circumstance in proof; and it is not, therefore, a legitimate foundation for a presumption. There is no open and visible connection between the fact out of which the first presumption arises and the fact sought to be established by the dependent presumption."

Douglas v. Mitchell, 35 Penn. St, 440, 446, 447.

"Presumptions must be based upon facts, and cannot be drawn from other presumptions."

19 Am. & Eng. Enc. of Law, 39, and note 3.

"Legal presumptions must be based upon a fact, and cannot be based upon presumptions; consequently where the sheriff does not levy the whole debt there will not be any presumption that there was no more property in the county, as this would be basing a presumption upon the presumption that the sheriff did his duty."

Pennington v. Yell, 52 Am. Dec., 262.

The fair deduction from the foregoing authorities is, that before a person can be visited with the penalty of laches for not making timely investigation, he must have had some actual knowledge or information of a fact which would lead an ordinarily prudent man to make the investigation. And this actual knowledge or information of some fact cannot be supplied by a general presumption of law, (based upon no fact) that the person is acquainted with the law, and therefore knows his rights in the premises, such presumption being false in fact. Therefore the complainants are not fixed with notice of their rights by any presumption of law, and they are guilty of no laches for not acting upon an artificial knowledge falsely attributed to them by the law.

XVI.

THE DEFENDANTS HAVE BEEN GUILTY OF NEGLIGENCE IN ACQUIRING A TITLE WHICH THE PUBLIC RECORDS SHOWED TO BE DEFECTIVE

The public records of Ramsey County, Minn., to-wit, the office of the Register of Deeds of said County, in Vol. C. of Deeds, page 288, contained the following patent bearing date the 20th day of March, 1850:

"*The United States of America*

To all whom these presents shall come—GREETING:

Know ye, that in pursuance of an act of Congress entitled 'An act to raise for a limited time an additional military force and for other purposes,' approved February 11th, 1847, Elizabeth Remsen, widow, Harriet A. Remsen, Mary Ann Remsen, John W. Remsen, Elizabeth Remsen and George W. A. Remsen, children, heirs-at-law of George W. Remsen, deceased, late a private, Company H, Third Regiment United States Infantry, having deposited in the General Land Office a warrant in their favor numbered 28811: there is therefore granted by the United States unto Nathan C. D. Taylor, assignee of said Elizabeth Remsen in her own right, and as *guardian of the aforesaid minor heirs*, and to his heirs, the southwest quarter of section twenty-eight in township twenty-nine, north of range twenty-three west, in the district of lands subject to sale at Stillwater, Territory of Minnesota, containing one hundred and sixty acres, according to the official plat of the survey of the said land returned to the General Land Office by the Surveyor-General, which said tract has been located in satisfaction of the aforementioned warrant in pursuance of the Act of Congress above mentioned, approved February 11th, 1847. To have and to hold the said quarter section of land with the appurtenances thereof unto the said Nathan C. D. Taylor, and to his heirs and assigns forever.

In testimony whereof, I, Zachary Taylor, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington on the twentieth day of March, in the year of our Lord one thousand eight hundred and fifty, and of the Independence of the United States the seventy-fourth.

By the President:

[Probate Court Seal].

Z. TAYLOR,

BY THOS. EWING, JR., *Secretary.*

N. SARGENT,

Recorder of the General Land Office."

Recorded Vol. 17, page 385.

This patent referred to the land warrant which had been issued by the United States Government to Elizabeth Remsen, widow, and Harriet A. Remsen, Mary Ann Remsen, John Wesley Remsen, Elizabeth Remsen and George W. A. Remsen, minor heirs of George W. Remsen, under the act of Congress of Feb. 11th, 1847. It did *not* recite any authority from the Orphans' Court to the guardian of the said minor heirs to assign the said land warrant, although the statute referred to expressly required such authority to be given to the guardian before the warrant could be sold.

An examination of the assignment of the warrant in the General Land Office in Washington would have disclosed the fact that the assignment was made by the guardian appointed by the Orphans' Court of the cityand county of Philadelphia, and that no authority from the said court for the assignment is recited therein, and that no such authority was filed in the General Land Office.

The following is a copy of the assignment:

"For value received, we, Elizabeth Remsen, widow, for myself and as guardian of the persons and estates of Mary Ann Remsen, John Wesley Remsen, Elizabeth Remsen and George W. A. Remsen, minor children of George W. Rensen, deceased, duly appointed by the Orphans' Court of the city and county of Philadelphia, and Harriet A. Remsen, do hereby sell and assign unto Nathan C. D. Taylor all our right and title, and all the right and title of the said minor children to the within certificate or warrant, No. 28811, for one hundred and sixty acres.

"Witness my hands this eleventh day of October, 1848, at Philadelphia, in the State of Pennsylvania.

"ELIZABETH (her X mark) REMSEN,
"*For Myself and as Guardian of the Minor Children of*
"*George W. Remsen, Deceased.*
"HARRIET A. REMSEN.

"Attest:
"ISAAC BOILEAU,
"WM. F. SMALL.

"Acknowledged before me this eleventh day of October, 1848, at Philadelphia, in the State of Pennsylvania.

"ISAAC BOILEAU,
"*Alderman and Justice of the Peace.*"

The Orphans' Court having jurisdiction in the premises is thus pointed out. An examination of the records of this court would have disclosed the absence of any authority from such court to said guardian to make the said assignment; and thus would have been

demonstrated the invalidity of the assignment and the fatal defect in the title of Nathan C. D. Taylor, the assignee.

The complainants maintain that it was the duty of the intending purchasers to make this search, and that they are conclusively presumed to know what would certainly have been discovered upon a proper search in the records.

"Not only are the recitals in the conveyance under which a vendee holds immediately binding upon him, but he is also bound to give heed to the recitals in prior instruments which are necessary to complete his chain of title, and will be affected with notice of those facts to which such recitals refer. This principle applies not only to recitals in deeds and mortgages, but includes those in wills and records, without which the title could not be deduced. This general doctrine is thus stated by Leonard, C., in *Cambridge Valley Bank* v. *Delano*, 48 N. Y., 326: 'The principle of equity is well established that a purchaser of land is chargeable with notice, by implication of every fact affecting the title which would be discovered by an examination of the deeds or other muniments of title of his vendor, and of every fact as to which the purchaser with reasonable diligence or prudence ought to be acquainted. If there is sufficient contained in any deed or record which a prudent purchaser ought to examine to induce an inquiry in the mind of an intelligent person, he is chargeable with knowledge or notice of the facts so contained.' And by Earl, C., this language is used: 'I think the following definition of constructive notice is sufficiently guarded to furnish a safe rule in most, if not all, cases. Where a purchaser has knowledge of any fact sufficient to put a prudent man upon an inquiry, which, if prosecuted with ordinary diligence would lead to actual notice of some right or title in conflict with that he is about to purchase, it is his duty to make the inquiry, and if he does not make it, he is guilty of bad faith or negligence to such an extent that the law will presume that he made it, and will charge him with the actual notice he would have received if he had made it."

Williamson v. Brown, 15 N. Y., 354.
Baker v. Bliss, 39 Id., 70.

"A vendee is affected with *notice* of the recitals contained in the written instruments forming his chain of title."

Stidham v. Matthews, 29 Ark., 650.
Baker v. Mather, 25 Mich., 51.
Burrous v. Roulhac's, Adm'x, 2 Bush., 39.
Payne v. Abercrombie, 10 Heisk., 161.
Willis v. Gay, 48 Tex., 463; S. C., 26 Am. Rep., 328.
Blaisdell v. Stevens, 16 Vt., 179.
White v. Foster, 102 Mass., 375.

Johnson v. Thweatt, 18 Ala., 741.
Boggs v. Varner, 6 W. and S., 469.
French v. Loyal Company, 5 Leigh, 627.
Sergeant v. Ingersoll, 15 Pa. St., 343.
Corbett v. Clenny, 52 Ala., 480.
Honore's Ex'r v. Blackwell, 6 B. Mon., 67.
Thornton v. Knok, Id., 74.
Deason v. Taylor, 53 Miss., 697.
Gress v. Evans, 1 Dak. Ter., 387.
Woods v. Krebbs, 30 Gratt, 708.

In *Burrus* v. *Roulhac's Adm'x*, 2 Bush., 39, the purchaser affected with notice bought at an execution sale of the land in discharge of the lien of one of two notes recited in the debtor's conveyance, and such purchaser was decided to hold the land subject to the lien of the other note. And so where one claims under a sheriff's sale against an enterer, as his title could be made out only by reference to the land office books, where the entry was shown, the law will impute to the purchaser knowledge of an assignment of the certificate of entry by his judgment debtor before the judgment, where such assignment is disclosed by the books of that office.

Martin v. Nash, 31 Miss., 324.

"A purchaser is chargeable with notice of everything that appears on the face of the deeds constituting his chain of title."

Burch v. Carter, 44 Ala., 115.
Pringle v. Dunn, 37 Wis., 449.
Cordova v. Hood, 17 Wall., 1.

"A recital in a deed forming a link in the chain of title of any facts, which should put a subsequent grantee or mortgagee upon inquiry, and cause him to examine other matters by which a defect in the title would be disclosed in constructive notice of such defect."

Acer v. Westcott, 46 N. Y., 384.
Cambridge Bank v. Delano, 48 Id., 326.

"The rule that a grantee always takes with constructive notice of whatever appears in the conveyances constituting his chain of title applies to a prior unrecorded mortgage referred to in the second mortgage."

Baker v. Mather, 25 Mich., 51.

"Where the defendant claims title through a deed which coutains a covenant to recovery, he is chargeable with constructive notice of such covenant."

Van Doren v. Robinson, 16 N. J. Eq., 256.

"From the time a conveyance is delivered to the clerk for record it is notice to all subsequent purchasers."

Mut. Life Ins. Co. v. Dake, 87 N. Y., 257.
Polin v. Mundell, 27 Kans., 138.
Brookes' Appeal, 64 Penn. St., 127.
Pringle v. Dunn, 37 Wis., 449.
Glader v. Thomas, 89 Penn. St., 343.
Polk v. Cosgrove, 4 Biss., 437.
Oats v. Walls, 28 Ark., 244.

It is well settled that a purchaser is conclusively presumed to have notice of every fact which is disclosed by the records constituting the chain of title under which he holds: See note to *Lodge* v. *Simonton*, 23 Am. Dec., 48–61, in which note the general subjects of notice and of circumstances sufficient to put a purchaser upon inquiry are discussed. The subject of constructive notice is also treated in the note to *Parker* v. *Conner*, 45 Am. Rep., 184–190.

McPherson v. Rollins, 1 Am. St. Rep., 826, and note.

"One who takes a mortgage upon real property has constructive notice of every fact which could have been ascertained by an inspection of the deeds and mortgages on record in the chain of title. Though one of these mortgages is apparently satisfied of record, yet an intending mortgagee must take notice of all the facts appearing therefrom, and from the entry of satisfaction thereof.

"A purchaser of property is bound to act as an ordinary careful man would under the circumstances, and when he acts in contravention to the dictates of reasonable prudence, and refuses to inquire when the propriety of inquiry is naturally suggested by the circumstances known to him, he is chargeable with notice of the facts which such an inquiry would have disclosed."

Kirsch v. Tozier, 143 N. Y., 390; 42 Am. St. Rep., 729, and note.

"If a contract is referred to in a recorded mortgage, all persons claiming under it take with notice of such contract."

National Bank v. Morris, 114 Mo., 255.
35 Am. St. Rep., 754, and note.

"Parties are bound, in the absence of fraud to take notice of facts exhibited in a public record."

Backer v. Pyne, 130 Ind., 288.
30 Am. St. Rep., 231, and note.

"It is the settled doctrine in equity,—that whatever is considered as sufficient to put a person on inquiry, is considered as conveying notice; for the law imputes to a person knowledge of a fact, of which the exercise of ordinary prudence and diligence must have apprised him."

Booth v. Barnum, 9 Conn., 286.

"Whatever is sufficient to put a person on inquiry, is considered in equity as conveying notice."

Sigourney v. Munn, 7 Conn., 324.

"Whatever puts a party on inquiry, amounts to notice, provided the inquiry becomes a duty (as it always is with a purchaser), and would lead to the discovery of the requisite fact, by the exercise of ordinary diligence and understanding."

Hill v Epley, 31 Pa. St., 331.

"Whatever is sufficient to put a party on inquiry, is good notice in equity to that party."

Smith v. Low, 1 Atkins Rep. (Eng.), 489.

"Whatever is sufficient to put a party upon inquiry, is good notice in equity."

Ringgold v. Bryan, 3 Md. Ch., 488.

"Whatever is sufficient to put a party upon inquiry which would lead to the truth is, in all respects, equal to, and must be regarded as, notice. If a subsequent purchaser acts in bad faith, and wilfully or negligently shuts his eyes against those lights which, with proper observation, would lead him to a knowledge of facts affecting the subject of his purchase, he will be held to have notice of such facts."

Chicago v. Kennedy, 70 Ill., 350

"Whatever is notice enough to excite attention and put a party on his guard and call for inquiry, is notice of everything to which such inquiry might have led, and every unusual circumstance is a ground of suspicion and prescribes inquiry."

Russell v. Danson, 76 Ill., 167.

"Notice to a purchaser of property of the existence of liens or incumbrances thereon, is sufficient, in the absence of explanation, to charge him with notice of any and all liens or encumbrances which an inquiry would have disclosed. It is not necessary in such a case to show actual notice of the particular instrument creating a lien to deprive him of the character of a *bona fide* purchaser."

Reed v. Gannon, 50 N. Y. Rep., 345.

In *Parker* v. *Connor*, 93 N. Y., 118, at 124, Rapallo, J., says:

"The doctrine of constructive notice has been most generally applied to the examination of titles to real estate. It is the duty of a purchaser of real estate to investigate the title of his vendor, and to take notice of any adverse rights of equity of third persons which he has the means of discovering and as to which he is put on inquiry. If he makes all the inquiry which due diligence requires, and still fails to discover the outstanding right, he is excused; but if he fails to use due diligence, he is chargeable, as matter of law, with notice of the facts which the inquiry would have disclosed. (*Williamson* v. *Brown* 15 N. Y., 354, and cases cited; *Acer* v. *Westcott*, 46 id., 354; 7 Am. Rep., 355). The questions in such cases are, first, whether the facts were sufficient to put the party on inquiry; and second, did he fail to exercise due diligence in making the inquiry? An affirmative answer to these two questions charges the party with notice as matter of law."

The result of the application of these authorities is that these defendants have been guilty of gross laches in purchasing the complainants' property without an investigation of the title, and they are fixed with constructive notice of the complainants' equity.

The defendants complain that they cannot be put *in statu quo*. Suppose this is so. Is it any reason why they should not be required to surrender to the true owners what does not belong to them? But it is proposed by the complainants, that the land shall be charged with the cost of the improvements which the defendants have placed upon it. The result will be, that those who have expended money in betterments thereon will receive back their money, and purchasers of land will, each in his turn, have recourse upon the warranties of their deeds. Fortunately for them, the Tatum estate, through whom they all derive title, is abundantly able to respond to their calls, as was stated on the argument and not controverted. They will not be permitted to retain the profits which have accrued from the increase of the value of the land itself. To this they have no legal or moral right.

There may be some features of hardship in this case. But hard cases are the quick-sands of the law; and such appeals will have no influence upon this court. The principles of justice are immutable. Their application to the facts of the case at bar will be made without regard to consequences. *Fiat justicia ruat coelum.*

In many cases it is a question which of two comparatively innocent parties must suffer. When a loss must fall on one or the other of them, the one who is the least innocent must bear it, although the court would desire, if it were possible, to relieve them both.

In the present case, it is not a difficult question to decide, whether the complainants, whose only fault is their inevitable ignorance and their poverty, or the defendants, intelligent, wealth and powerful, who have blindly purchased a title which the record shows worthless, are least innocent.

JOHN W. HINSDALE,
Solicitor and of Counsel for Appellants.

Raleigh, N. C., January 31, 1898.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1897.

No. 94.

ELIZABETH WETZEL ET AL., APPELLANTS,

vs.

THE MINNESOTA TRANSFER COMPANY, ET AL.

RESPONDENTS.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

STATEMENT.

This suit was commenced by the appellants in the United States Circuit Court for the District of Minnesota, on the 28th day of May, 1892, to establish their title to the following described tract of land situate in the County of Ramsey, State of Minnesota, and within the corporate limits of the City of St. Paul, to-wit: the southwest quarter of section 28, township 29 N., Range 23 W., which was patented by the United States to Nathan C. D. Taylor, as assignee of Elizabeth Remsen in her own right and as guardian of the minor heirs of George W. Remsen, deceased. The respondents claim under Taylor, and are several hundred in number, of whom 208 are alleged to be abso-

lute owners of several tracts or lots. The remaining respondents, greater in number, are alleged to be lien holders by judgment or otherwise upon various premises comprised within such tract.

A large part of the property was subdivided into lots and blocks long before the commencement of this action, and many residences have been built thereon. The property, long before the commencement of this action, had been traversed, and is now occupied, by nearly all of the railroad lines centering in St. Paul and Minneapolis. The westerly sixty acres of the tract became the property of the Minnesota Transfer Railway Company May 18, 1880. (Record, p. 159.) This company effects upon this tract the railway transfers of freight coming from all directions to St. Paul and Minneapolis, and bound to destinations beyond those cities. This company commenced its improvements in 1880 or 1881. (Record, p. 159.) They consist of tracks, warehouses, stockyards, derricks, platforms, scales; and a great part of these improvements were put on the property in 1881 and 1882 at an expense of several hundred thousand dollars.

The value of the entire 160 acres, exclusive of the tracks, buildings and improvements, was estimated by Mr. Lovering (p. 162) at $1,177,500 by Mr. Charles H. Pratt (p. 172) at $1,177,500, by Mr. Hazard (p. 179) at $1,000,000, by Mr. Rosmun (p. 184) at $1,165,500, by Mr. Fairchild (p. 189) at $1,129,000, in June, 1892. Their testimony is not contradicted.

George W. Remsen was a soldier in the Mexican war, and by virtue of his enlistment and service, he became entitled, under the provisions of the ninth section of an act of Congress, approved on February 11, 1847, to one hundred and sixty acres of land. (9 Statutes, p. 123, 125.) Remsen died in the service in the month of October, 1847, and under the provisions of said act, his right to said land inured to the benefit of his surviving wife and children. On September 30, 1848, a warrant was duly issued to Elizabeth Remsen, widow of said George W. Remsen, and to Harriet A., Mary Ann, John W., Elizabeth and George W. A. Remsen, children and heirs-at-law of said George W. Remsen, deceased, who was described in the warrant as "late a private in Company K, Third regiment United States infantry." At the

time of the issuance of said warrant all of said children were minors, Harriet A. Remsen, the oldest, being then about seventeen years of age. Section nine of the act of February 11, 1847, aforesaid, provided in substance that in the event of the issuance of a land warrant under said act to the minor children of a deceased soldier, "then the legally constituted guardian of such minor children shall, in conjunction with such of the children, if any, as may be of full age, upon being duly authorized by the orphans' or other court having probate jurisdiction, have power to sell and dispose of such certificate or warrant for the benefit of those interested."

Elizabeth Remsen qualified as guardian of all the minors aforesaid except Harriet A., the oldest, before the Orphans' Court of the County of Philadelphia, State of Pennsylvania, on October 6, 1848. Subsequently and on the 11th of October, 1848, she sold and assigned the land warrant in question to Nathan C. D. Taylor, who located the same on the land now in controversy, and received a patent therefor as heretofore stated. The assignment of said land warrant was executed by said Elizabeth Remsen, the mother, in her own behalf, "and as guardian of the minor children of George W. Remsen, deceased;" but she appears to have obtained no order from the Orphans' Court aforesaid authorizing her to sell her children's interest therein. The assignment of the land warrant was also executed by Harriet A. Remsen, the oldest daughter, who had previously become the wife of Jacob Heyer, but her husband did not join with her in the execution of the assignment.

By numerous mesne conveyances covering a period of many years, the title to the aforesaid tract of land thus acquired by Nathan C. D. Taylor has now become vested in very many persons who are in possession of different parcels of the land and who were made parties defendant to the bill of complaint.

All of the aforesaid minor children of George W. Remsen, deceased, lived to attain their majority and for some years thereafter. The youngest of them, George W. A. Remsen, attained his majority as early as the year 1863, the others, except Harriet A., in the years 1856, 1858 and 1861.

Elizabeth Wetzel, one of the appellants, is the former wife of the soldier, George W. Remsen, who died in October, 1847, she having married Paul Wetzel since the death of her first husband. Harriet A. Van Zant, another of the appellants, is the oldest daughter of said George W. Remsen, who joined with her mother in the sale and assignment of the land warrant as heretofore stated. John Wesley Remsen, also one of the appellants, is a son of George W. Remsen, deceased. The other children of said deceased heretofore named, to-wit: Mary Ann, Elizabeth and George W. A. Remsen, appear to be dead and their interests are represented in the present proceeding by the other appellants, to-wit: by Emma F. Hergesheimer and Maggie L. Beckman, who were the daughters of Mary Ann Remsen, and by Mary J. Remsen and her children, George W., Clara B. and Mabel Remsen, who are respectively the widow and lineal descendants of George W. A. Remsen, now deceased. Elizabeth Remsen appears to have died leaving no lineal descendants.

It is claimed in behalf of the appellants that the sale and assignment of the aforesaid land warrant was utterly void as to the interests of all the minor children of George W. Remsen other than Harriet A., who joined in the assignment of the same, because the assignment made by their mother and guardian was not authorized by any order or decree of the Orphans' Court of the County of Philadelphia. They, therefore, prayed that the title of such heirs to an undivided interest in the tract of land aforesaid might be established, and that the defendants holding under the patent issued to Nathan C. D. Taylor might be adjudged to hold the legal title so acquired in trust for the appellants, and that they might be required to convey the legal title to the land so held to the appellants.

On the final hearing the suit was dismissed on the ground of laches. The complainants appealed to the Circuit Court of Appeals, which court, on December 10, 1894, affirmed the decree of the Circuit Court. (P. 232.) The opinions of the Circuit Court and of the Court of Appeals, respectively, are printed in the record. (P. 208 et seq., and p. 225 et seq.)

There is no allegation in the bill of fraud in the transfer of the warrant to Taylor, nor, indeed, is there any allegation of any fraud whatever. The contention of the appellants is that the transfer was void as to the minor children, because it was not authorized by an Orphans' or Probate Court, and that, therefore, the various defendants ought to be adjudged as trustees for the appellants.

The respondents maintain that:

1. This action is barred by the Minnesota Statute of Limitations pleaded in the several answers.

2. The right of the complainants to relief, if they ever had any, is barred by their laches and by that of their ancestors.

3. The warrant in question was personal property and was assignable by the guardian of the minors.

4. Whether the Orphans' Court had authorized the guardian to sell and assign this warrant is a question of fact which was to be, and was, considered by the Interior Department in issuing the patent. The determination of the department upon this is conclusive, under the circumstances of this case.

5. The patent raises a presumption that all the requisites of law previous to its issue have been complied with.

6. By expressly ratifying in the bill the location of the warrant, the complainants ratify the assignment of the warrant to Taylor, and disentitle themselves to the relief specially prayed.

ARGUMENT.

I.

THIS ACTION IS BARRED BY THE MINNESOTA STATUTE OF LIMITATIONS PLEADED IN THE SEVERAL ANSWERS.

The statutes in force when these actions were commenced were as follows:

"Actions can only be commenced within the period prescribed within this chapter after the cause of action accrues, except where in special cases a different limitation is prescribed by statute." (G. S. Minnesota 1894, sec. 5,133; G. S. 1866, ch. 66, sec. 3; G. S. 1878, ch. 66, sec. 3.)

"No action for the recovery of real property, or for the recovery of the possession thereof, shall be maintained unless it appears that the plaintiff, his ancestor, predecessor or grantor was seised or possessed of the premises in question within fifteen years before the commencement of the action. The periods prescribed in the preceding section for the commencement of action are as follows:" (Id., sec. 5134; G. S. 1866, ch. 66, sec. 4; G. S. 1878, ch. 66, sec. 4, as amended 1889, Session Laws, ch. 91, sec. 1.)

"Within six years:

"Sixth. An action for relief on the ground of fraud; the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud.

"Seventh. Actions to enforce a trust or compel an accounting, where the trustee has neglected to discharge his trust, or has repudiated the trust relation, or has fully performed the same." (Id., sec. 5136; G. S. 1866, ch. 66, sec. 6, as amended 1877, Session Laws, ch. 24, sec. 1; G. S. 1878, ch. 66, sec 6.)

"If a person entitled to bring an action mentioned in this chapter, except for a penalty or forfeiture, is, at the time the cause of action accrued, either:

"First, Within the age of twenty-one years; or,

"Second, Insane; or,

"Third, Imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than his natural life.

"The time of such disability is not a part of the time limited for the commencement of the action, except that the period within which the action must be brought, cannot be extended more than five years by any such disability, except infancy, nor can it be so extended, in any case, longer than one year after the disability ceases." (Id., sec. 5147; G. S. 1866, ch. 66, sec. 17, as amended 1869, Session Laws, ch. 60, sec. 1; G. S. 1878, ch. 66, sec. 17.)

George W. Remsen, the soldier, left him surviving the five children named in the bill. Each of them attained the age of twenty-one years. The youngest reached that age in 1863. Three died after attaining that age. The death of the last of these three took place in 1882. So that from 1863 as to the youngest and from the various years anterior to 1863 as to the others when they severally attained their majority the statute of limitations has been operative against them.

When the statute of limitations begins to run subsequent disability will not interrupt it.

Gordon v. Gilfoil, 99 U. S., 168.
Braun v. Sauerwin, 10 Wall., 218.
Hogan v. Kirtz, 94 U. S., 773.
McDonald v. Hovey, 110 U. S., 619.

Where time has commenced to run against the ancestor it still continues to run against the heir although the latter is an infant.

Williams v. First Presby. So., 1 Ohio St., 478.
Henry v. Conn, 12 Ohio, 193.
Wilson v. Harper, 25 W. Va., 179.

Burk v. Western Land Association, 40 Minn., 506, was, like the case at bar, an action to enforce an implied trust in real property, the legal title to which was claimed to have been wrongfully granted by patent from the United States to the defendant's grantor, in violation of a prior vested right of the plaintiff.

Burk entered the land under the pre-emption laws in September, 1858; in October, 1858, a patent issued from the United States, and without notice to Burk, to the defendant's grantor. Burk was at that time in the actual possession of the land; his pre-emption entry was then a subsisting claim on the records of the land department, and it was not canceled until some time in 1861; he was given no hearing or opportunity to appeal in the matter of issuing the patent or in the cancellation of this entry. He did not bring his action until January, 1887. The court said:

"The action was clearly barred by the seventh subdivision of sec. 6, ch. 66, Gen. Stat. 1878, which, although not passed until 1877, is applicable to pre-existing causes of action. Stine v. Bennett, 13 Minn., 138. If there were any facts taking the case out of the statute or excusing this long delay, the plaintiff ought to have set them up."

In respect of the answer that the plaintiffs, their ancestors, etc., were not seised or possessed of said land of any part thereof within fifteen years before the commencement of this action, we have to observe that, where there is a statutory bar at law, the same period is also, either by analogy or in obedience to the statute, adopted as a bar in equity.

Lord Camden, in Smith v. Clay, cited in the note to Deloraine v. Browne, 3 B. C. C., 639, said:

"As a court of equity has no legislative authority, it cannot properly define the time of bar by a positive rule to an hour, a minute, or a year; it is governed by circumstances. But as often as parliament has limited the time of actions and remedies to a certain period in legal proceedings, the court of chancery has adopted that rule, and applied it to similar cases in equity; for when the legislature has fixed a time at law, it would be preposterous for equity, which by its own proper authority always maintained a limitation, to countenance laches beyond the period that law is confined to by parliament; and therefore in all cases, where the legal right has been barred by parliament, the equitable right to the same thing has been concluded by the same bar."

Lord Redesdale, in Hovenden v. Lord Annesley, 2 Sch. & Lef., observed:

"It is said that courts of equity are not within the statute of limitations. This is true in one respect; they are not within the words of the statutes, because the words apply to particular legal remedies; but they are within the spirit and meaning of the statutes, and have been always so considered. I think it is a mistake in point of language to say that courts of equity act merely by analogy to the statutes; they act in obedience to them."

And again:

"I think the statute must be taken virtually to include courts of equity; for when the legislature has by statute limited the proceedings at law in certain cases, and provided no express limitation for proceedings in equity, it must be taken to have con-

templated that equity followed law; and therefore it must be taken to have virtually enacted in the same case a limitation for courts of equity also."

See also Medlicott v. O'Donell, B. & B., 166; Marquis of Cholmondeley v. Lord Clinton, 2 J. & W., 151; Foley v. Hall, 1 Ph., 405; Knox v. Gye, 5 L. R. H. L., 674.

Commenting upon these cases Mr. Lewin observes (p. 1163) in his work on Trusts:

"Upon these principles, then, an equitable claim to land could never have been enforced after a lapse of twenty years; for though to writs of right and formedon much longer periods were allowed at law, yet equity always looked upon these as peculiar and excepted cases, and guided itself rather by analogy to the statute of James which fixed the limitation to the prosecution of rights of entry."

The same principle was declared by the Supreme Court in Elmendorf v. Taylor, 10 Wheat., 152—see extract from opinion of Marshall, C. J., set out *post* in our discussion of the defense of laches.

The bar of six years imposed by the Statutes of Minnesota was decisively applied by the United States Circuit Court of Appeals in St. Paul, S. & T. F. Ry. Co. v. Sage, 1 U. S. Circuit Court of Appeals Rep., p. 256. It was sought in that case, as in this, to enforce a constructive trust as to lands. We venture to set forth the opinion quite at length.

The case arose upon the following facts:

"On the twenty-sixth day of January, 1886, there was filed in the United States Circuit Court for the District of Minnesota by the Hastings & Dakota Railway Company a bill in equity, in which it was averred that the complainant was the real owner of the 20,807 acres of land above named; that the same had been wrongfully certified and conveyed to the St. Paul, Stillwater & Taylor's Falls Railway Company; that by the terms of the act of congress of July 4, 1866, and the location of the line of railway, and the filing of the map showing such location, the equitable right and title to said lands had passed to the complainant company before said lands had been selected and certified as indemnity lands for the benefit of the St. Paul, Stillwater & Taylor's Falls Company, which was made the defendant to the bill, and a decree was prayed to the effect that the defendant be

decreed to hold all said lands, and the legal title thereof, in trust for complainant, and to convey the same, or that the title thereto be passed to complainant, as provided by the statutes of the State of Minnesota, and for other and further relief." The court said:

"We propose to first consider the questions arising upon the plea of the state statute of limitations, the overruling of which is assigned as error. On behalf of the complainant it is argued that when courts of the United States, sitting in equity, are called upon to determine and enforce rights arising under acts of congress, the provisions of a state statute of limitations cannot be made applicable thereto. Where rights to property are created by acts of congress, and the procedure for enforcing or protecting the same is likewise created by congressional action, and the jurisdiction is conferred exclusively upon the federal courts, as in matters pertaining to patents, and the like, then it may well be claimed that state statutes of limitation do not apply thereto; but in cases wherein the jurisdiction over the subject-matter of controversy is concurrent in the state and federal courts, why should not force be given to the state statute in both courts? In England the statute was originally applicable only to actions at law, but courts of equity, in all cases of concurrent jurisdiction, gave full effect to the provisions of the statute, acting, as it was said, by way of analogy; but by the act of 3 and 4 Wm. IV. suits in equity were brought within the express provisions of the statute. In Minnesota the statute in terms is applicable to proceedings at law and in equity, and is therefore binding upon the state courts, without regard to the nature of the jurisdiction that is being exercised in the given case, or, as it is said by the Supreme Court in Godden v. Kimmel, 99 U. S., 201:

"'Statutes of limitation form part of the legislation of every government, and are everywhere regarded as conducive, and even necessary, to the peace and repose of society. When they are addressed to courts of equity as well as courts of law, as they seem to be in controversies of concurrent jurisdiction, they are equally obligatory in both forms as a means of promoting uniformity of decision.'

"The general question under consideration is quite fully discussed by Mr. Justice Harlan in delivering the opinion of the court in Kirby v. Railroad Co., 120 U. S., 130; 7 Sup. Ct. Rep., 430, in which it is held that the jurisdiction in equity conferred upon the courts of the United States cannot be impaired or impeded in execution by state statutes of limitation, and particularly in cases solely of equitable cognizance; that in cases of concurrent legal and equitable jurisdiction, subject to the rule of carefully preserving the equitable jurisdiction of the federal courts unimpaired, the court of equity is bound to enforce the state statute of limitations, and in cases of equitable cognizance solely the court will, by way of analogy, apply the provisions of the state statute applicable to the subject-matter of the controversy, and thus give effect to the salutary principle underlying these statutes of repose. In applying these principles to the

facts of the particular case then under consideration, the court held that it would not, the case being in equity, apply a provision of a state statute that would bar relief in equity against an actual secret fraud in a given number of years from the perpetration of the act of fraud, but would apply the limitation in accordance with the equitable principle recognized in the federal courts; that the bar caused by the lapse of time should not begin to run until the discovery of the fraud by the one aggrieved thereby, or the equivalent of such discovery. It appearing, however, that nearly seven years had elapsed after the discovery of the fraud, the court held that the limitation of six years provided in the statutes of New York, from which state the cause came to the Supreme Court, was a bar to the proceeding.

"In Wood v. Carpenter, 101 U. S., 135, will be found a very instructive discussion of what is required in the way of pleading and proof, when it is sought to avoid the bar of the statute on the ground of lack of knowledge of the alleged fraud. It is therein said:

"'Statutes of limtations are vital to the welfare of society, and are favored in the law. They are found and approved in all systems of enlightened jurisprudence. They promote repose by giving security and stability to human affairs. An important public policy lies at their foundation. They stimulate to activity and punish negligence. While time is constantly destroying the evidence of rights, they supply its place by a presumption which renders proof unnecessary. Mere delay extending to the limit prescribed is itself a conclusive bar. The bane and the antidote go together.'

"The court then proceeds to show that the principle that the bar of the statute, in cases of fraud, is not usually held to begin to run until the discovery of the fraud, is a rule originally established by courts of equity, and thence imported into the statutes; that a party who seeks to avoid the plea of the statute is bound by stringent rules of pleading and evidence; that there must be distinct averments as to the time when the fraud, misrepresentation or concealment was discovered, and the nature thereof, so that the court may see whether, by ordinary diligence, an earlier discovery might not have been made; that a general allegation of ignorance at one time, and of knowledge at another, are of no effect; that a party seeking to avoid the bar of the statute on account of fraud must aver and show that he used due diligence to detect it, and, if he had the means of knowledge or discovery in his power, he will be deemed to know all that, with ordinary care, he might have obtained knowledge of; that the fraud which will arrest the running of the statute must be one that is secret and concealed, and not one that is open and known.

"In Bicknell v. Comstock, 113 U. S., 149; 5 Sup. Ct. Rep., 399, it appeared that an action for the breach of the covenants of warranty in a conveyance of lands in Iowa was brought in the United States Circuit Court for the Eastern District of New York; it

being claimed that the superior title was in the State of Iowa under a congressional grant to the state. It appeared in the cause that in May, 1869, a patent in due form had been issued conveying the land to Bicknell, which patent was forwarded to the local land office at Fort Dodge, Iowa, for delivery to Bicknell. In June, 1878, the commissioner of the general land office ordered the patent to be returned to his office, and on its reception he tore off the signature of the president, and erased the record of the patent in the general land office. It was pleaded in the case that Bicknell and his grantees had been in the actual possession of the premises since May 23, 1862, and had made valuable improvements on the land. The Supreme Court held that, without deciding whether the patent conveyed a valid title or not, Bicknell and his grantees were in possession under claim and color of title, and that the provisions of the Iowa statute, making 10 years' possession a bar, was applicable to the case, regardless of whether the suit was at law or in equity, citing in support of the ruling, the cases of Leffingwell v. Warren, 2 Black, 599; Croxall v. Sherrerd, 5 Wall., 289; Dickerson v. Colgrove, 100 U. S., 583. These citations are sufficient to show, as is said in Leffingwell v. Warren, supra, 'that the courts of the United States, in the absence of legislation upon the subject by congress, recognize the statutes of limitation of the several states, and give them the same construction and effect which are given by the local tribunals.' There is nothing in the subject-matter of the controversy now before the court that takes the case out of the general rules thus enunciated by the Supreme Court. The land described in the bill is situated in the State of Minnesota. The original parties to the litigation are both corporations created under the laws of the state. The question in dispute between them is, which party is the owner of the land; and, while the settlement of that question involves, among other matters, the construction of the several acts of congress making grants to the State of Minnesota to aid in the construction of certain lines of railway, that fact does not make the litigation solely and exclusively of federal jurisdiction. This proceeding to settle the rights of the respective parties to these lands could have been brought in the proper court of the State of Minnesota, and its jurisdiction to hear and determine all questions arising in the case would have been beyond dispute. If the suit had been thus brought in the state court, can it be doubted that it would have been the duty of that court to give full force to the state statute of limitations, had the same been pleaded in the case? If any of the provisions of the statute—a statute wisely enacted to give stability to titles, thereby promoting confidence, and encouraging the improvement of the lands of the state, and intended to prevent the evil of parties waiting until by lapse of time valuable evidence may be rendered difficult of procurement or wholly unattainable, and then preferring doubtful and speculative claims—would have barred the suit if brought in the state court, why should not the same bar be effectual when the proceeding is in the federal court? Upon both principle and authority we are of

the opinion that the case is one in which the federal court, sitting in equity, should give the same force and efficacy to the provisions of the state statute that would be given thereto if the cause was pending before a court of the State of Minnesota.

"In the state statute are to be found two clauses which it is claimed have relation to a suit of this character, being subdivisions 6 and 7 of sec. 6, ch. 66, tit. 2, of the General Statutes of Minnesota, the limit of time applicable to each being six years. These clauses read as follows:

"'Sixth. An action for relief on the ground of fraud; the cause of action in such case is not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud.

"'Seventh. Actions to enforce a trust or to compel an accounting where the trustee has neglected to discharge his trust, or has repudiated the trust relation, or has fully performed the same.'

"In the absence of an authoritative construction of these clauses of the statute by the Supreme Court of the State of Minnesota, we should be of the opinion that the proceeding now before the court comes within the sixth subdivision above cited. That subdivision covers actions for relief on the ground of fraud; and, as the statute is undeniably intended to include proceedings at law and in equity, it may well be argued that the clause includes not only such actual frauds as may form the basis for actions at law, but also such transactions as a court of equity will adjudge to be frauds, actual or constructive; thus including cases wherein a party, having become vested with the title of property rightfully belonging to another, refuses to convey the same to the real owner, or to account to him for the value thereof, in case the same has been sold and the money appropriated by the one not entitled thereto, which withholding of the property or its proceeds would be deemed to be a fraud upon the rights of the real owner. The seventh subdivision, covering actions to enforce a trust or to compel an accounting where a trustee has neglected his duty or has repudiated the trust relation, would seem to be limited to trusts, express, implied or resulting, growing out of the agreements of parties, or out of the duties and obligations pertaining to some relation of trust assumed by the one charged as a trustee, and does not include purely constructive trusts of the character of that charged against the defendant in this proceeding. This is clearly indicated by the terms used to describe the derelictions of the trustee, which may form the basis of the action, intended to be included within this subdivision, to-wit, 'where the trustee has neglected to discharge his trust, or has repudiated the trust relation, or has fully performed the same.' This phraseology is entirely apt when applied to cases wherein an actual trusteeship exists, and the trustee neglects the duty assumed by him, or, after assuming the position, then repudiates the trust relation, or closes up the trust, but fails to properly account for his stewardship, but it is only by a strained construction of the terms that they can be made applicable to constructive trusts that are imposed by the

law, contrary to the will of the one held to account. It is, however, claimed by the defendant that the Supreme Court of Minnesota in the case of Burk v. Association, 40 Minn., 506; 42 N. W. Rep., 479, has expressly ruled that a case similar to that now before the court, wherein it was sought to have the defendant adjudged a trustee of the legal title for the benefit of the plaintiff, was governed by the seventh subdivision above cited, and it is not to be denied that the opinion does so state. The case is very briefly reported, and in view of the language used in other decisions by the same court, including that in the case of Lewis v. Welch, decided in April last, and reported in 48 N. W. Rep., 60, it is not entirely clear that the Supreme Court of Minnesota, whose construction of the statute is, of course, binding upon us, intends to be understood as ruling that cases like the present do not come under the sixth, but only under the seventh, subdivision of section 6 of the statute. If it be held that the seventh subdivision is the clause applicable to the proceeding, then it follows that the bar of the statute is made out, for it is not disputed that the lands were deeded to the defendant company in 1871, and that company has ever since that date claimed to be the owner of the lands, so that more than six years had elapsed since the defendant received the title before the present suit was brought.

"The same result follows, if it be held that the case falls within the provisions of subdivision 6 of the statute. In that event the ruling in Wood v. Carpenter, already cited, would be applicable, and it would be incumbent upon complainant, in order to avoid the bar created by the lapse of six years since the vesting of the title in the defendant company, to show clearly when discovery of the fact was made, and that the company was not in fault in obtaining such knowledge at an earlier day. The fraud sought to be charged upon the defendant is not an actual fraud, or is it one which in any way was concealed or kept secret. The facts show that both companies were claiming these lands. Every step taken by the defendant was, of necessity, made openly and above board. The lands were selected as indemnity lands, belonging to the defendant, and the governor of the state asked in due form that they be so certified. They were certified to the state and by the state were deeded to the defendant. These deeds were entered of record in th counties wherein the lands are situated, and, in fact, every step taken in procuring the same was made part of the public records of the federal and state land departments, which were open to the scrutiny of the public. The lands were offered for sale and sold to various purchasers, who entered into actual and open possession of the premises, and thus notice in every possible way was given to all the world that the defendant claimed the land with full right to sell and dispose of the same.

"In view of the facts disclosed upon this record, it cannot be held that the complainant can escape the bar provided in the sixth subdivision on the ground that it did not discover the facts of the alleged fraud, for, if it was ignorant of the fact of the

transfer of the title of these lands to the defendant, it must have been willfully ignorant, in that it had before it the means of knowledge, and it is not claimed that the defendant practiced any concealment in the premises. The plea that was filed on behalf of the defendant was, in effect, that six years and more had elapsed since the title of the lands had been conveyed to it, and therefore the action was barred by lapse of time. According to the ruling of the United States Supreme Court in Wood v. Carpenter, supra, if the complainant desired to escape the bar by reason of the fact that relief was sought against fraud not discovered until a time within the six years, then it was the duty of the complainant, by proper allegations and proof, to show the existence of actual fraud, concealed from the knowledge of complainant, and, without fault on its part, not discovered until within the six years before the bringing of the suit; and under the ruling of the Supreme Court of Minnesota in Burk v. Association, supra, if there were any facts excusing the delay, the complainant should have pleaded and proved the same. The bill on its face expressly avers that the lands in dispute were selected by the agents appointed by the governor of the state, with the approval of the secretary of the interior, and were certified to the state in aid of, and for the benefit of, the St. Paul & Pacific Company, the predecessor of the defendant company, on the eleventh day of October, 1871, and it is not averred that the complainant or its predecessor had not knowledge of this fact. When the plea of the statute was filed, it was open to complainant to meet it by the averment of any and all facts which would avoid the running of the statute, if any such existed, but no amendment or supplemental bill of amendment thereto was filed, and there is, therefore, upon the face of the pleadings nothing to the contrary of the fact that complainant and all its predecessors had full knowledge of all the transfers of the lands in dispute at the time the same were made.

"The evidence also shows that the entire line of complainant's road was completed by December, 1879, more than six years before this suit was brought.

"Reliance is placed, in argument, upon the testimony of George E. Skinner and W. H. Kelly, who were land commissioners of the complainant company, that they or the company did not have notice of the transfer of these lands to the defendant until in 1883. While these witnesses do in general terms so testify, they wholly fail to explain why they, or the company they represented, did not take interest enough in the matter to make any inquiry about these lands, or to obtain knowledge of their condition in regard to title or occupancy. It does not seem possible that no examination or inquiry in regard to these lands was ever made on behalf of the complainant company for nearly four years after the whole line of road was completed, and for seventeen years after they were granted to the company, according to the present contention. The means of knowledge on part of the complainant were too open and available for it to be credible that the company allowed a period of seventeen years to elapse

after the date of the grant under which it claims, and four years after it had earned all it could under the grant, before any inquiry touching these lands was made in the interest of the company, and even the slightest inquiry or examination would have disclosed the fact that the state and United States authorities had selected and conveyed these lands to the defendant company, deeming that company to be entitled thereto. If, however, it is true that the complainant did not obtain knowledge of this fact until in 1883, as is now claimed, then such want of knowledge was due solely to the inexcusable negligence of the complainant, and ignorance due to negligence cannot be urged as a ground why the bar of the statute should not prevail."

II

THE RIGHT OF APPELLANTS TO RELIEF, IF THEY EVER HAD ANY, IS BARRED BY THEIR LACHES AND BY THAT OF THEIR ANCESTORS.

"Laches is such a neglect or omission to assert a right as, taken in connection with the lapse of time more or less great, and other circumstances causing prejudice to an adverse party, operates as a bar in a court of equity." "Thus it has been declared with general approval that only conscience, good faith and reasonable diligence can call a court of equity into activity, and that stale demands will not be aided where the party has slept upon his rights or acquiesced for a great length of time. The doctrine is based upon the ground of public policy, and its aim is the discouragement, for the peace and repose of society, of stale and antiquated demands."

12 Ency. of Law, 543, 534.

In respect to laches as applicable to cases where it is attempted to enforce a constructive trust, the doctrine is forcibly laid down by Mr. Lewin in his work on Trusts:

"It is a well-known rule that as between cestui que trust and trustee in case of direct trust no length of time is a bar; for, from the privity existing between them, the possession of the one is the possession of the other, and there can be no adverse title. It has

ence been argued, as the person into whose hands the estate followed is also by construction of law a trustee, the cestui ue trust is entitled to the benefit of the rule, and is not pre- uded by mere lapse of time from establishing his claim. But ie authorities show that this doctrine cannot well be main- ined.

"'It is certainly true,' said Sir W. Grant, 'that no time bars a irect trust; but if it is meant to be asserted that a court of quity allows a man to make out a case of constructive trust at ny distance of time after the facts and circumstances happened ut of which it arises, I am not aware that there is any ground or a doctrine so fatal to the security of property as that would be; o far from it, that not only in circumstances where the length of me would render it extremely difficult to ascertain the true tate of the fact, but, where the true state of the fact is easily as- ertained, and where it is perfectly clear that relief would have riginally been given upon the ground of constructive trust, it s refused to the party who, after long acquiescence, comes into court of equity to seek that relief.' And Lord Redesdale ob- erved: 'The position that trust and fraud are not within the tatute must be thus qualified: That if a trustee is in possession, nd does not execute his trust, the possession of the trustee is the ossession of the cestui que trust; and if the only circumstance s that he does not perform his trust, his possession operates othing as a bar, because his possession is according to his title. But the question of fraud is of a very different description; that s a case where a person who is in possession by virtue of the raud is not, in the ordinary sense of the word, a trustee, but s to be constituted a trustee by a decree of a court of equity, ounded on the fraud; and his possession in the meantime is ad- erse to the title of the person who impeaches a transaction on he ground of fraud.'

"To claims in equity there appear to be three bars arising from apse of time: I. A statute of limitation; II. The presumption f something done which, if done, is subversive of the plaintiff's ight; III. The ground of public policy or the inconvenience of he relief."

2 Lewin on Trusts, bottom page 1158 et seq.

"The court, after a great length of time, will presume some act o be done, which, if done, is a bar to the demand.

"Though the plaintiff's demand cannot be met by an absolute bar, and no release of right can be presumed, yet, thirdly, relief will not be granted where, if administered, it would lead to great public or private inconvenience."

2 Lewin on Trusts, pp. 1167-1169.

"Lapse of time or delay in suing, unaccounted for by disability or other circumstances, constitutes per se, in the eye of a court of equity, laches disentitling the plaintiff, in certain classes of

cases at least, to relief from the court. Thus where a plaintiff cestui que trust seeks to impeach a purchase by a trustee, a delay of less than twenty years may bar his title to relief. So where a plaintiff seeks to set aside a purchase from him by his solicitor, or of a revisionary interest, or to affix a defendant with a constructive trust, or to call a person to account for acts of waste, or comes to a court of equity alleging a cause of fraud as a ground for avoiding the operation of the statute of limitations. So where an account was sought by a surviving partner against the estate of a deceased partner, the court, even assuming such case to fall within the exception as to merchant's accounts in the statute of limitations, refused its aid after a delay of thirteen years. And where the assistance of the court is sought in a suit for specific performance, or in one partaking of that character, the rule is extremely strict. It is difficult to refer the refusal of the relief by the court, in the instances mentioned, to any one general principle. In the cases of purchases by trustees, or of claims founded upon constructive trust, the probability of alteration of circumstances in regard to the property, and the unfairness of the plaintiff in lying by, have weighed with the court. Perhaps the nearest approach to general principle will be found under the head of 'Public Convenience:' 'Expedit Republicae ut sit finis litium.'"

2 Lewin on Trusts, pp. 1169-1171.

Laches has been held to be a bar in nearly every conceivable case falling within the general doctrine in the following decisions:

Burk v. Western Land Assn., 40 Minn., 506.

Ry. Co. v. Sage, 1 U. S. C. Ct. of Appeals, 256.

Wagner v. Bird, 7 How., 234.

U. S. v. Moore 12 How., 209.

Badger v. Badger, 2 Wall., 307.

Godden v. Kimmell, 99 U. S., 201.

Crosby v. Beall, 17 Wall., 336.

Russel v. Trans. Univ., 1 Wheat., 432.

McQuiddy v. Ware, 20 Wall., 14.

Marsh v. Whitman, 21 Wall., 178.

Kirby v. McGlynn, 21 Wall., 503.

Fletcher v. Fisher, 120 U. S., 534.

Felix v. Patrick, 145 U. S., 317.

McKnight v. Taylor, 1 How., 161.

Brown v. Buena Vista Co., 95 U. S., 157, 160-161.
Speidel v. Henrici, 120 U. S., 377.
Speidel v. Henrici, 15 Fed., 753.
Richards v. Mackall, 125 U. S., 183.
Elmendorf v. Taylor, 10 Wheat., 152.
Boon Co. v. Burlington R. R. Co., 139 U. S., 684, 692-3.
Herwood v. R. R. Co., 17 Wall., 78, 80, 81.
Holgate v. Eaton, 116 U. S., 33, 39.
Mackall v. Casilear, 137 U. S., 556, 566.
U. S. v. Flint, 4 Sawyer, 58.
Fuller v. Melrose, 1 Allen, 166.
Peabody v. Flint, 6 Allen, 52.
Royal Bank v. Grand Junc. R. R. Co., 125 Mass., 490, 494-5.
U. S. v. Beebee, 17 Fed. Rep., 36.
Campau v. Van Dyke, 15 Mich., 378.
Wilbur v. Flood, 16 Mich., 40.
Hubbardston Lumber Co. v. Bates, 31 Mich., 158, 168.
Follamsbe v. Kilbreth, 17 Illinois, 522.
Evans v. Bacon, 99 Mass., 213.
Learned v. Foster, 117 Mass., 365.
Ashurt's Appeal, 60 Pa. St. Rep., 290, 315, 316, 317, 320.
Evans' Appeal, 81 Pa. St., 278, 300, 303.
Kane v. Bloodgood, 7 John Ch., 90, 113.
Leavenworth v. Chicago, 18 Fed. Rep., 209.
Foster v. Mansfield, Coldwater & Lake Mich. R. R. Co., 146 U. S., 88.
Johnson v. Standard Mining Co., 148 U. S., 360.

In Mayward v. National Bank, 96 U. S., 611, it was sought to set aside a sale of certain stocks, for an accounting, etc. The sale alleged to be void or voidable was made three years and a half before the commencement of the action, during which time the complainant made no claim that the sale was invalid. The bill was dismissed on the ground of complainant's laches and because the parties could not be placed in statu quo. The court said:

"The facts present insuperable obstacles to any decree in favor of the appellant. If the sale made by the bank was originally impeachable by him, the right to question its validity was lost by his acquiescence. He was in a condition, immediately after the sale, to enforce such rights as the law gave him, as he was fully apprised of their nature, and of all the material facts of the case. He now claims that the sale was in derogation of his rights and injurious to his interests; and yet his conduct was uniformly inconsistent with any purpose to repudiate the sale or assert ownership of the stock. His course was continuously such as to induce a reasonable belief of his fixed determination to abide by the action of the bank. He remained silent when he should have spoken. He will not be heard now, when he should be silent. He must be held to have waived and abandoned the right, if any he had, to impeach the transaction of September 8, 1868. But the appellant is equally concluded by the lapse of time during which that transaction has been allowed to stand, without any effort upon his part to impeach it. It must now be regarded as unimpeachable. Courts of equity often treat a lapse of time less than that prescribed by the statute of limitation as a presumptive bar, on the ground of discouraging stale claims, or gross laches, or unexplained acquiescence in the assertion of an adverse right."

Laches is a bar, in cases where the parties cannot be restored to their original possession. Peabody v. Flint, 6 Allen, 52, 67.

In Campau v. Van Dyke, 15 Mich., 378, it was sought in equity to avoid a decree establishing a title to real estate six years and a half after the right of action accrued. The bill was dismissed as not brought within a reasonable time.

In Brown v. Buena Vista Co., 96 U. S., 157, the suit was to enjoin the enforcement of a judgment alleged to have been procured by fraud and conspiracy. The statute of limitations of Iowa, in which state the suit was brought, barred such an action within five years after the discovery of the fraud. The statute had not run, yet the court dismissed the bill, saying:

"The statute of limitations of Iowa of five years, perhaps, does not apply, because the fraud, if it existed, was not known sufficiently early. The statute could run only from the time of the discovery. But the court of equity applies the rule of laches according to its own ideas of right and justice. Every case is governed chiefly by its own circumstances. Whether the time the negligence has subsisted is sufficient to make it effectual is a question to be resolved by the sound discretion of the court. Sullivan v. Portland & Kennebec R. R. Co., 94 U. S., 806. The facts in this connection to which we have adverted are entitled to grave consideration.

"Nothing can call forth a court of equity into activity but conscience, good faith and reasonable diligence. When these are wanting, the court is passive and does nothing. Laches and neglect are always discountenanced, and, therefore, from the beginning of this jurisdiction there was always a limitation of suits in this court.

"The law of laches, like the principle of the limitation of actions, was dictated by experience, and is founded in a salutary policy. The lapse of time carries with it the memory and life of witnesses, the muniments of evidence, and other means of proof. The rule which gives it the effect prescribed is necessary to the peace, repose and welfare of society. A departure from it would open an inlet to the evils intended to be excluded."

In Godden v. Kimmell, 99 U. S., 201, the court says:

"Relief in such cases may be sought; but the rule is that the cestui que trust should set forth in the bill specifically what were the impediments to an earlier prosecution of the claim, and how he or she came to be so long ignorant of their alleged rights and the means used by the respondent to keep him or her in ignorance and how he or she first came to a knowledge of their rights."

In Marsh v. Whitmore, 21 Wall., 178, 184, 185, it was sought to enforce an accounting from an attorney for the proceeds of certain bonds of a client, which he had sold and bid in for himself twelve years before the institution of the suit. The court refused the relief, and in doing so observed:

"At any rate, the claim now presented is a stale one. The complainant does not set forth specifically any grounds which could have constituted impediments to an earlier prosecution of his suit. He does not even inform us when he first became acquainted with his supposed wrongs. His language is that he was not aware of the purchase by the defendant until lately, language altogether too vague to invoke the action of a court of equity. 'The party,' says this court, in Badger v. Badger, citing from previous decisions, 'who appeals to the conscience of the chancellor in support of a claim, where there has been laches in prosecuting it, or long acquiescence in the assertion of adverse rights, should set forth in his bill specifically what were the impediments to an earlier prosecution of his claim, how he came to be so long ignorant of his rights, and the means used by the respondent to fradulently keep him in ignorance, and how and when he first came to a knowledge of the matters alleged in his bill; otherwise the chancellor may justly refuse to consider his case, on his own showing, without inquiring whether there is a demurrer or formal plea of the statute of limitations contained in the answer.'"

In Richards v. Mackall, 124 U. S., 183, the court dismissed a bill brought twelve years after the purchase which it sought to

avoid, and, in doing so, observed as follows, after stating the rule laid down in Badger v. Badger, 2 Wall., 87, 95:

"So in Sullivan v. Portland, etc., R. R. Co., 94 U. S., 806, 811: 'To let in the defense that the claim is stale, and that the bill cannot, therefore, be supported, it is not necessary that a foundation be laid by any averment in the answer of defendants. If the case, as it appears at the hearing, is liable to the objection by reason of the laches of the complainants, the court will, upon that ground, be passive and refuse relief.' In the latter case, it was said that equity would sometimes refuse relief where a shorter time than that prescribed by the statute had elapsed without suit."

In Speidel v. Henrici, 120 U. S., 377, the court held:

"In case of an implied or constructive trust, unless there has been fraudulent concealment of the cause of action, lapse of time is as complete a bar in equity as at law," and adds, "independently of any statute of limitations, courts of equity uniformly decline to assist a person who has slept upon his rights, and shows no excuse for his laches in asserting them."

Ashurt's Appeal, 60 Pa. St., 290, was a suit to adjudge the defendant a trustee and for an accounting. Mr. Strong, afterwards Justice Strong, of the Supreme Court, acting as referee, held as follows:

"In all cases in which an attempt is made to fasten a constructive trust upon a purchaser, the attempt must fail unless made in a reasonable time. Acquiescence is presumed from delay. Lapse of time, indeed, is no bar to the assertion of a direct trust, but not so when the trust is constructive. If a trustee to sell becomes the purchaser, his purchase is generally voidable, but the cestui que trust must move to avoid it within a reasonable time. Campbell v. Walker, 5 Ves., 678; Hawley v. Kramer, 4 Cowen, 718; Prevost v. Gratz, 1 Peters, C. C. Rep., 368; Clegg v. Edmundson, 3 Jur. N. S., 299. This last case is instructive in many particulars. In Beckford et al. v. Wade, 17 Ves., 87, Sir William Grant said: 'It is certainly true that no time bars a direct trust as between cestui que trust and trustee; but if it is meant to be asserted that a court of equity allows a man to make out a constructive trust, at any distance of time after the facts and circumstances happened out of which it arises, I am not aware that there is any ground for a doctrine so fatal to the security of property as that would be; so far from it that not only in circumstances where the length of time would render it extremely difficult to ascertain the true state of the fact, but where the true state of the fact is easily ascertained, and where it is perfectly clear that relief would have been given upon the ground of constructive trust, it is refused to the party who, after long acquiescence, comes into a court to seek that relief. In proof of this it is not necessary to produce any other case than

which Lord Kenyon, when master of the rolls, on the sole ground of length of time, reversed a decree by which Sir Thomas Sewell had granted relief against a fraudulent purchase, and had declared a purchaser to be a trustee for the plaintiff in the cause, Lord Kenyon agreeing perfectly that the purchase was originally fraudulent, and that defendant must have been held to be a trustee if the suit had been brought in proper time.' To this effect the cases are very numerous. It would extend my remarks much too far to cite them. They are all sustained by the principle that equity presumes against the existence of a trust unless it be asserted within a reasonable time. The principle is essential to the security of property. It is in harmony with the course of human conduct generally, and it is in most cases accordant with the actual fact. But what is the reasonable time within which a constructive trust must be asserted? The cases do not clearly define it, and perhaps it is incapable of strict definition. It must vary with the circumstances of each case. For myself, I think it may safely be laid down that when a party claims to hold another, a trustee of personal property under a constructive trust, he must assert the claim within six years from the time when the trust is alleged to have originated, in analogy to the statute of limitations. He cannot be permitted to make the assertion afterwards. This, I think, should be regarded as a general rule. There may be cases when even six years cannot be allowed, as when a party having a right to set aside a transaction or treat it as a trust stands by and sees another dealing with the property in a manner inconsistent with any trust, and makes no objection. Duke of Leeds v. Amherst, 2 Phill., 123; Jordan v. Moiney, 5 H. L. C., 185. And so when the rights of third persons may have intervened. So also where the property is of a peculiar kind, and the alleged trustee, in ignorance of any intention to hold him to an account, relying upon his ownership, enters upon a hazardous business or incurs large responsibilities. At least this is true when the alleged constructive trust does not grow out of actual or intended fraud. It has often been said that equity obeys the statute of limitations, and it has been held that laches for a much shorter period than six years, aided by other circumstances, will bar a right."

It will be observed that six years was the limitation prescribed by the laws of Pennsylvania to such suits, and the court held that statute to be a bar in equity. The Supreme Court of that state says:

"After a very careful examination of this case, with reference to the facts and law involved, and the arguments of counsel, we are unable to discover error in any of the conclusions arrived at by our brother, Strong, J., who heard it at great length at Nisi Prius; we, therefore, affirm the order dismissing the bill of the complainants with costs, for the reasons stated in the opinions of the learned judge."

In Evans' Appeal, 81 Pa. St., 278, it was sought to establish a constructive trust. The bill was filed four years and a half after the transactions sought to be avoided. The court held it barred. Justice Mercur, delivering the opinion of the court, said:

"Hence, since the plaintiffs had full knowledge, new business arrangements have been made and other rights have intervened. The proceedings were delayed, under the attending circumstances, an unreasonable time. Having been so delayed, the laches is fatal to the plaintiff's bill." Page 302.

A delay which might be immaterial in ordinary cases will bar relief in instances where the property is subject to contingencies or fluctuations in value, or when the rights or liabilities of others, or even of the alleged wrong-doer, have in the meantime varied.

Hayward v. National Bank, 96 U. S., 611, 618.

Baker v. Houck, 36 Fed. Rep., 403.

It is to be borne in mind, in considering the case at bar, that there has been no attempt by any of the defendants, or their predecessors, to conceal their claim or any fact upon which it is based. No such charge is made; everything has been open and public and the plaintiffs are presumed to have had notice and knowledge.

Leavenworth Co. v. Chicago Co., 18 Fed. Rep.,209.

It was held by the Supreme Court, in Badger v. Badger, 2 Wall., 87, 92, that in order to obtain relief in equity,

1st. The trust must be clearly established.

2d. The facts must have been fraudulently and successfully concealed by the trustee from the knowledge of the cestui que trust.

The court observes:

"The party who makes such appeal should set forth in his bill specifically what were the impediments to an earlier prosecution of his claim; how came he to be so long ignorant of his rights and the means used by the respondent to fraudulently keep him in ignorance; and how and when he first came to a knowledge of the matters alleged in his bill; otherwise the chancellor may justly refuse to consider his case on his own showing, without inquiring whether there is a demurrer or formal plea of the statute of limitations contained in the answer.

"The bill in this case is entirely defective in all these respects. It is true there is a general allegation that the fraudulent acts

were unknown to complainant till within five years past, while the statement of his case shows clearly that he must have known, or could have known, if he had chosen to inquire, at any time in the last thirty years of his life, every fact alleged in his bill."

Tested by this rule, which, as we have seen, has been reiterated by this court in several subsequent decisions, the allegations in the bill in the case at bar are fatally defective, nor are they aided by the proofs. The allegation in the bill is that "neither the heirs nor their predecessors in interest, except the said Elizabeth Wetzel, at the time of the alleged assignment of said land warrant or at any time thereafter, knew of such sale, and they remained in absolute ignorance thereof and also in absolute ignorance of any such a land warrant or any land warrant whatever having been issued to them or to their father or their guardian, and also in absolute ignorance that their father ever became entitled to any such land warrant or any land warrant whatever. That not until August, 1891, did they or their predecessors acquire any knowledge," etc.

In Burk v. Western Land Association, 40 Minn., 506, the court, after holding the case barred by the statute of limitations, said:

"We might add that, independently of any statute of limitations, the laches of the plaintiff in delaying this action almost thirty years was so gross and so entirely unexcused, that no court would ever grant the relief; and in equity the rule of pleading was, if the case of the plaintiff, as stated in the bill, will not entitle him to a decree, it might be taken advantage of by demurrer."

In Goodnow v. Empire Lumber Co., 31 Minn., 468, an infant, fifteen years old, being married, conveyed real estate Nov. 27, 1857. She died Dec. 16, 1867, and her husband died Nov. 10, 1874. Plaintiffs, her children, gave notice of disaffirmance of the conveyance March 22, 1883. The disability of infancy of their mother, the grantor, ceased April 21, 1863. For four years and eight months before she died she was free of the disability of infancy, and for one year and four and one-half months she was free of the disability of coverture.

The court held that her delay of three and one-half years was unreasonable, and barred the right of the heirs to disaffirm her deed, saying:

"In every other case of a right to disaffirm, the party holding it is required, out of regard to the rights of those who may be affected by its exercise, to act upon it within a reasonable time. There is no reason for allowing greater latitude where the right exists because of infancy at the time of making the contract. A reasonable time after majority within which to act is all that is essential to the infant's protection. That ten, fifteen, or twenty years, or such other time as the law may give for bringing an action, is necessary as a matter of protection to him, is absurd. The only effect of giving more than a reasonable time is to enable the mature man, not to correct what he did amiss in his infancy, but to speculate on the events of the future—a consequence entirely foreign to the purpose of the rule, which is solely protection to the infant. Reason, justice to others, public policy (which is not subserved by cherishing defective titles), and convenience, require the right of disaffirmance to be acted upon within a reasonable time."

In Wagner v. Baird, 7 How., 234, it was sought to enforce a claim under a voluntary settlement, after a lapse of more than forty years, and where a great change of value in property had taken place, partly attributable to the expenditure of the defendants and those under whom they claimed, and no fraud was charged. It was held that the claim was stale and that the court would not enforce it. The court said:

"The court of equity will not give relief against conscience or public convenience, where a party has slept upon his right. 'Nothing,' says Lord Camden, 3 Bro. Chr., 640, 'can call forth this court into activity but conscience, good faith and reasonable diligence. When these are wanting the court is passive, and does nothing.' Length of time necessarily obscures all human evidence and deprives parties of the means of ascertaining the nature of the original transaction; it operates by way of presumption in favor of the party in possession. Long acquiescence and laches by parties out of possession are productive of much hardship and injustice to others and cannot be excused but by showing some actual hindrance or impediment caused by the fraud or concealment of the party in possession, which will appeal to the conscience of the chancellor. The party guilty of such laches cannot screen his title from the just imputation of silence, merely by the allegation of an actual impediment or technical disability. * * * No bad faith, concealment or fraud can be imputed to them. If the trustees or cestui que trust chose to reside in Kentucky and not look after these lands, for near half a century, they can have no equity from a disability that was voluntary and self-imposed. The residence of the trustees in Kentucky was not considered as an obstacle or objection in the minds of those who executed the deed to their assuming the trust and care of lands in Ohio. There was no greater impediment to the prosecution of their claim in a court of

equity at any time within forty years than there is now. They have shown nothing to mitigate the effect of their laches and long acquiescence, or which can entitle them to call upon a court of equity to investigate the fairness of the transactions, after all the parties to them have been so long in their graves, or grope after the truth and facts involved in the midst of obscurity consequent on the lapse of nearly half a century."

We have elsewhere cited St. P., S. & T. F. Ry. Co. v. Sage, 1st U. S. C. C. of Appeals, 160, in support of the plea of the statute of limitations. The court in that case, after applying those statutes as a bar, proceeds at great length to hold the action barred by laches. After laying down the general principle, it observes:

"But aside from considerations of this nature, it is clearly apparent that the money interest of the defendant and others holding under it would be disastrously affected by entertaining the present bill at this late date. * * * The equitable rule that one who is negligent shall not have relief, and the barring of proceedings after the lapse of stated periods of time by statutory enactments, are alike based upon public policy as well as upon constructions affecting only individual rights. It is to the public interest that stability in the title to property should exist and that all uncertainties and disputes as to ownership of land should be speedily put at rest. No greater evil to the community at large can well be imagined than that caused by the attacks upon the title to large bodies of land which have been for years in the actual possession of bona fide settlers, thus weakening the public confidence in the recognized and established evidences of title. It is greatly to the welfare of the community that realty shall be improved to the best advantage and rendered as productive as possible, and yet these results cannot be expected if the parties in possession are in doubt whether if they sow they will be permitted to reap the harvest."

McKnight v. Taylor, 1 How., 161, was a case of an express trust created in favor of creditors, under which one had a right to require sale of property and payment of his debts, in 1818. He slept upon his rights until August, 1837, and failed to account for his delay. There was no statutory limitation, but it was held that the claim to have the trust executed was stale and would not be enforced in equity.

Elmendorf v. Taylor, 10 Wheat., 152, was a suit brought to obtain a conveyance of land held by the defendants under a prior grant, and under entries which were also older than the entry of the plaintiff. Defendants did not adduce evidence of their interest, but relied upon their patent. The patent was

issued February 11, 1794; those of the defendants at a prior dat and the bill was filed in 1815.

The court, speaking by Chief Justice Marshall, held, after di cussing the subject fully, that the delay constituted a comple bar to the bill, saying as to laches and the statute of limitation that:

"From the earliest ages courts of equity have refused the aid to those who have neglected for an unnecessary length time to assert their claims especially where the legal estate ha been transferred to purchasers without notice and although th statutes of limitations do not either in England or in these state extend to suits in chancery, yet the courts in both countries hav acknowledged their obligations. Their obligations, we believ have never been controverted. * * *

"This is not an express trust. The defendants are not, t use the language of the Lord Chancellor in the case last cite strict trustees, whose duty it is to take care of the interests the cestui que trusts, and who are not permitted to do anythin adverse to it. They hold under a title in all respects adversar to that of the plaintiff, and their possession is an adversary po session. In all cases where such a possession has continued fo twenty years, it constitutes, in the opinion of this court, a com plete bar in equity. An ejectment would be barred, did th plaintiff possess a legal title."

In Harwood v. Ry. Co., 17 Wall., 78, a bill was filed to set asid certain fraudulent judicial proceedings, five years after the completion. The bill was dismissed upon the ground of laches.

In The United States v. Beebee, 17 Fed. Rep., 36, the doctrin of laches was applied against the United States, in a suit brough by it to set aside certain patents asserted to have been fraud lent, and against the claims of certain heirs, which it allege were unlawfully and fraudulently set aside by the action of th land department some forty-three years before the filing of th bill.

In McKinney v. Bode, 33 Minn., 450 M. in 1872 purchased ce tain school lands, paid part of the purchase price, received certificate, went into possession, built a house and remained i possession until December, 1873, when he executed an assig ment of the certificate to his wife, abandoned the land and h wife and family and never afterward assumed possession. Th wife and a son who remained with her from the date of suc abandonment paid the taxes and the interest on the unpa

purchase money until the death of the wife in 1880, and after her death on account of the estate. The administrator of her estate, under license, sold and assigned the certificate to A., who paid to the land commissioner all unpaid purchase money and received a patent. M. brought suit against a purchaser claiming under conveyance from the patentee. The court said:

"Until the patent issued, the legal title remained in the state. Gen. St. 1876, ch. 38, sec. 12. The certificate gave the purchaser a right to the possession of the land (sec. 17), and by complying with its terms he would become entitled to a conveyance of the legal title. In this respect it was in effect similar to an ordinary contract for purchase, with perhaps this difference: That a default in its conditions would absolutely terminate all rights under it. It became functus officio on the issuance of the patent. The patent, when regular on its face—that is, when it is in proper form, is signed by the proper officers, and has the proper seal—is conclusive evidence of the legal title. Johnson v. Towsley, 13 Wall., 72; Gibson v. Chouteau, Id., 92; Boardman v. Reed, 6 Pet., 328; Green v. Liter, 8 Cranch, 229; U. S. v. Arredondo, 6 Pet., 691, 724; Patterson v. Tatum, 3 Sawy., 164; Pacific Coast Min. & Milling Co. v. Spargo, 8 Sawy., 645; S. C., 16 Fed. Rep., 348; Sherman v. Buick, 93 U. S., 209.

"The purchaser is not required to look behind it; all the incipient steps authorizing the officers to issue it are presumed to have been regularly taken. It cannot be avoided (in a collateral action, at any rate) for irregularities in the conduct of those who are appointed by the government to supervise the progressive course of a title from the commencement to its consummation in a patent. Polk's Lessee v. Wendal, 9 Cranch, 87; Lea v. Polk Co. Copper Co., 21 How., 493; Johnson v. Towsley, supra. It is conclusive proof of the act of granting by the state. U. S. v. Arredondo, supra. But it may be defeated, even in an action at law, by showing want of title in the state, or absolute want of power in the officers to issue it. Polk's Lessee v. Wendal, supra; Sherman v. Buick, supra. It would certainly be contrary to public policy to permit a patent, which is issued by sworn officers, and is deemed of so high a character, as evidence of title, as sometimes to be designated as of 'absolute verity' (U. S. v. Arredondo) to be assailed by every one, in every kind of proceeding, for irregularities of officers issuing it, for which the patentee is in no way responsible. * * *

"Did this plaintiff show such supperior equities? The bare statement of the foregoing facts indicates the proper answer. Seven years before the patent issued he abandoned the land and gave up the design to become himself entitled to a patent: abandoned, in fact if not in law, all interest in the matter. Had nothing been done but what he did, all rights under the certificate would have been forfeited six years before the patent issued. Others, by performing its conditions, kept it alive, not acting upon his procurement nor for him, nor intending what he did

to be for his benefit, but acting in their own behalf, for their own interest, and upon the notion (grossly mistaking the law) that the legal interest in the certificate had passed by his assignment to Mrs. McKinney. And after the patent was earned and issued, he seeks to appropriate the benefit of what was done by those who earned it, taking his stand solely on the naked legal proposition that his attempted assignment to Mrs. McKinney was void. There is no equity in that."

In Murphy v. Burke, 47 Minn., 99, a person who had received a certificate of sale of school lands, in 1872, assigned the certificate in 1875, and his assignee in 1880 assigned it to one Mitchell. From 1880 to 1890, when Mitchell assigned the certificate to the plaintiff and quitclaimed to him, he, Mitchell, never paid any interest on the certificate or taxes and never gave any attention to said premises or asserted any interest therein. In the meantime, in 1887, the lands were sold at tax sale to the state. No redemption having been made, Burke, having become the purchaser under the tax sale from the state, applied, in 1886, to the state land commissioner to make payment of interest due (being for more than ten years) on the certificate, and paid said interest, and then a few days afterwards paid to the state all the principal and interest then remaining due on the certificate, and thereupon received a patent. The premises by this time had grown to be worth $96,000. The plaintiff in 1890 brought suit to hold Burke as trustee. The tax sale under which Burke claimed was void. The court said:

"The action is brought on the theory that plaintiff's assignor, Mitchell, was equitably entitled to the patent issued to Burke, and that the latter received, and his grantees hold, the legal title in trust for Mitchell and the plaintiff, his grantee.

"The validity of the tax judgment and sale is assailed on the grounds that, the county commissioners not having properly designated a newspaper in which to publish the tax list and notice, the court had not jurisdiction to render the judgment (though we think this objection not well founded), and that the sale certificate does not properly describe the lands.

"If the tax sale were valid, that, of course, would be decisive of the case, for, in that event, the purchaser from the state would have been in law the successor in interest of the person to whom the school land certificates issued. But it does not follow that, if the tax sale was void, the plaintiff would be entitled to judgment. In McKinney v. Bode, 33 Minn., 450 (23 N. W. Rep., 851), the person to whom the patent issued claimed and had acted under an absolutely void assignment of the school land certifi-

cate, yet we held that the patentee was entitled to retain the land.

"The plaintiff also assigns as error that the finding of fact that Mitchell had abandoned all claim to the premises is not sustained by the evidence, in this: That there is no evidence of the assessment of taxes after those paid by Culver. It is not claimed that, at any time prior to the assignments by him to plaintiff, Mitchell ever made any effort to ascertain if there were taxes to be paid, and there was some evidence that he did not. As, during a part of the time, at least, the lands were subject to taxation, and as they were taxed for some of the years, as shown by the judgment, it was a fair inference that Mitchell gave no attention to the matter so far as the taxes were concerned. There was no pretense that, during the more than ten years after Culver assigned the certificates, any one gave any attention to the interest accruing annually on them, although by their terms they were to become utterly void upon a default for more than six days. This conduct, explained by the merely nominal prices for which the certificates were assigned to Mitchell—only a dollar and a half for the three; by the fact that at that time there was, in form at least, a tax judgment and tax sale against the land, and the time for redemption expired, and there being nothing to suggest any other reason for it—leads irresistibly to the conclusion that Mitchell did not deem it worth while to attempt to secure the lands by complying with the terms of the certificates, and getting rid of the tax judgment and sale, perhaps by litigation, and that, if he ever had any intention to so secure the lands, he abandoned it. The subsequent enormous increase in the value of the lands suggests a reason for the attempt to revive or resume it. The evidence fully sustains the finding.

"We may concede that the tax sale was void, yet it is apparent that it was an important element in the transactions, just as the void assignment in the Bode case was. It undoubtedly induced action on the part of the person who complied with the law in respect to school land certificates, and obtained the patent. There can be little doubt that it had influence with Mitchell in preventing his taking any steps to secure the lands under the certificates, and it must have been considered valid by the land commissioner when he issued the special certificates. The title of the patentee and his grantees is unassailable, except by one who shows an equitable right to receive the patent superior to the equity of the patentee, so that the issuance of it to, and the retention of the legal title by, the latter operates as a fraud upon him.

"Unless one shows such superior equitable right, it is no concern of his that the patentee was or was not legally entitled to receive it. The question is not, therefore, did the tax sale transfer the legal right under the school land certificates, but, assuming it to have been void, so that the legal title to the certificate was not affected, was the equity of the legal owner of them, who, for more than ten years before they became functus officio by the issuance of the special certificates, utterly neglected

to do anything that they required, and abandoned the intention to comply with them and secure the land, superior to that of the one who, acting upon the faith of the tax sale, performed what the certificates and the law required, and so earned the patent? No argument is required to show that it was not. The case is not distinguishable from the case of McKinney v. Bode."

We confidently submit that the decision in Felix v. Patrick, 145 U. S., 317, is decisive of the case at bar. In that case Sophia Felix, an Indian half-breed, was entitled to and received certain scrip, amounting to 480 acres, locatable upon any unoccupied land. By express provision of statute no transfer or conveyance of such scrip was valid. Some person obtained possession of this scrip to the amount of 120 acres from her and her husband, and took from them a power of attorney and a quit-claim deed, bearing date March 31, 1860, executed in blank. Two years afterwards these were turned over by some one to Patrick, who located the scrip upon what is now a part of the City of Omaha. A large part of the tract had, before the commencement of the suit, been platted, divided into lots, sold to purchasers, whose only notice of the infirmity of their title was the fact that the power of attorney and quit-claim deed were dated nearly two years prior to the scrip location. In 1887 the heirs of Sophia Felix, then deceased, brought a suit in equity in the United States Circuit Court, charging fraud in the transaction by which she parted with the scrip, and seeking to have Patrick declared a trustee as to all the lands that he had not disposed of, and to impose upon his grantees the same liability. The court held that upon these facts Patrick originally took the lands as trustee for said Felix, but that he did not take them under express trust to hold for her benefit, but under the implied or constructive trust created by operation of law and arising from the illegal practices resorted to in obtaining the power of attorney and deed, and under which, after the scrip was located, Patrick derived his title. Patrick did not take possession under any acknowledged obligation to her, but he located for his own use and benefit, and his possession in the beginning was held by the court to have been adverse to hers. The court said:

"Under such circumstances the law raises an obligation upon the part of the cestui que trust to make use of reasonable diligence in discovering and unearthing the fraud and in applying to the courts for legal redress. In this case twenty-eight years elapsed from the time the scrip was procured of Sophia Felix, and nearly twenty-seven years from the time it went into possession of Patrick, before the bill was filed. It admits of no doubt that if Sophia Felix and these plaintiffs had been ordinary white citizens, under no legal disabilities such as those arising from infancy, lunacy or coverture, this lapse of time would be fatal to the recovery, at least unless it were conclusively shown that knowledge of the fraud was not obtained, and could not, by reasonable diligence, have been discovered within a reasonable time after it was perpetrated."

To obviate the defense of laches the plaintiffs insisted that Sophia Felix and her heirs were and continued to be until 1887 tribal Indians of the Sioux nation, under certain disabilities to make contracts, and incapable of suing in any of the courts of the United States. Recognizing the force of this argument, the court said:

"But their very analogy to persons under guardianship suggests a limitation to their pupilage, since the utmost term of disability of an infant is but twenty-one years, and it is very rare that the relations of guardianship and ward, under any circumstances, even those of lunacy, are maintained for a longer period than this. It is practically admitted in this case that in 1887 and when their relations with their tribe were severed by accepting allotments of land in severalty, under the treaty of April 29, 1878, they became citizens of the United States; that they were then chargeable with the same diligence as white people in the discovery of this fraud; and as their bill was filed in 1888 it is claimed that they fulfilled all the requirements of law in this particular. While, as alleged in the bill, the discovery of this fraud may have been contemporaneous with their becoming citizens of the United States, there is no palpable connection between the one fact and the other, and we think the bill is defective in failing to show how the fraud came to be discovered and why it was not discovered before. A simple letter to the land department at any time after this scrip was located would have enabled them to identify the land and the name of the person who had located it, and it is difficult to see why, if they had ever suspected the misuse of this scrip, they had not made inquiries long before the time they did, or why their emancipation in 1887 should have suddenly awakened their diligence in this particular. There is, it is true, an averment that Patrick never informed the said Sophia or her husband that he had located said scrip, but on the contrary fraudulently concealed the same and exercised every precaution to prevent such proceedings coming to the knowledge of the party. But no acts of his in this connection are averred in the bill, and we are left to infer that his concealment was that of mere silence, which is not enough."

The court approves the rule of pleading to excuse laches cited ante from Badger v. Badger, 2 Wall., 94, and proceeds:

"Sophia Felix and her husband must have known that she had parted with the scrip, yet she lived until 1865 and her husband till 1882 without apparently making any attempt to discover what had become of it. Nor did their heirs apparently make any effort to discover it until 1887, when their intelligence seems to have suddenly sprung into activity upon their becoming citizens of the United States. * * * It was said by this court, in Wood v. Carpenter, 101 U. S., 135, 140, that in this class of cases the plaintiff is held to stringent rules of pleadings and evidence, and especially must there be distinct averments as to the time when the fraud, mistake, concealment or misrepresentation was discovered, and what the discovery was, so that the court may clearly see whether, by ordinary diligence, the discovery might not have been before made.

"See also Stearns v. Page, 7 How., 819, 829.
"Wollensak v. Reiher, 115 U. S., 96.
"Godden v. Kimmell, 99 U. S., 201, 211.

"The mere fact that in 1887 these plaintiffs took their lands in severalty and became citizens does not adequately explain how they so quickly became cognizant of this fraud or why they had remained so long in ignorance of it.

"But, conceding that the plaintiffs were incapable, so long as they maintained their tribal relations, of being affected with laches, and that these relations were not dissolved until 1887, when they were first apprised of their right to this land, it does not necessarily follow that they are entitled to the relief demanded by this bill. The real question is whether equity demands that a party who, twenty-eight years ago, was unlawfully deprived of a certificate of muniment of title of the value of $160 shall now be put in possession of property admitted to be worth over a million. The disproportion is so great that the conscience is startled, and the inquiry is at once suggested whether it can be possible that the defendant has been guilty of fraud so gross as to involve consequences so disastrous. In a court of equity at least the punishment should not be so disproportionate to the offense, and the very magnitude of the consequences in this case demands of us that we should consider carefully the nature of the wrong done by the defendant in acquiring the title to these lands. He is not charged in the bill with having been a party to the means employed, the obtaining the scrip from Sophia Felix, or of being in collusion with the unknown person who procured it from her. More than that the allegations of this bill do not satisfy us that she did not receive full value for the scrip. * * *

"However this may be, taking all the allegations of this bill together, it is very evident that Patrick bought these muniments of title as hundreds of others bought them—in violation of the letter and policy of the law, but without actually intending to defraud Sophia Felix or any other person. This transgression the law pronounces a fraud upon her, but it lacks the element of wickedness necessary to constitute moral turpitude. If there

had been a deliberate attempt on his part of knavish practice, to beguile or wheedle her out of these lands, we should have been strongly inclined to afford the plaintiffs relief, at any time during the life of either of the parties, but, as the case stands at present, justice requires only what the law in the absence of the statutory limitation would demand—the repayment of the value of the scrip, with legal interest thereon. * * *

"There are other considerations which require to be noticed in this connection. By the foresight and sagacity of this defendant, this scrip was located upon lands within the limits of one of the most thriving and rapidly growing cities of the West. That which was wild land thirty years ago is now intersected by streets, subdivided into blocks and lots, and largely occupied by persons who have bought upon the strength of Patrick's title, and have erected buildings of a permanent character upon their purchases. The bill charges all these with notice of the defect in Patrick's title and prays that the conveyances to them be declared null and void and that plaintiffs be admitted into possession of their lands, and that Patrick account for rents, profits and issues, so far as he has received them. If the views put forward in their brief be correct, that these instruments were of no greater effect than if they had been forgeries, it is difficult to say how these transfers can be supported, and it needs no argument to show that the consequences of setting them aside would be disastrous. Certainly if they were not entitled to the lands themselves, they would be entitled to recover of Patrick what he had received for them. Waiving this question, it is scarcely within the bounds of possibility to suppose that Sophia Felix, if she had located this scrip, would have realized title of the sum her heirs now demand of this defendant. The decree prayed for in this case, if granted, would offer a distinct encouragement to the purchase of similar claims, which doubtless exist in abundance through the Western territories (Felix herself having received scrip to the amount of 480 acres, only 120 of which are accounted for), and would result in the unsettlement of large numbers of titles upon which the owners have rested in assured security for nearly a generation."

In Foster v. Mansfield, Coldwater & Lake Michigan Railroad Company, 146 U. S., 88, this court says (p. 99):

"The defense of want of knowledge on the part of one charged with laches is one easily made, easy to prove by his own oath, and hard to disprove; and hence the tendency of courts in recent years has been to hold the plaintiff to a rigid compliance with the law which demands, not only that he should have been ignorant of the fraud, but that he should have used reasonable diligence to have informed himself of all the facts."

In Johnson v. Standard Mining Co., 148 U. S., 360, this court observes (p. 370):

"While there is no direct or positive testimony that plaintiff had knowledge of what was taking place with respect to the

title or development of the property, the circumstances were such as to put him upon inquiry; and the law is well settled that, where the question of laches is in issue, the plaintiff is chargeable with such knowledge as he might have obtained upon inquiry, provided the facts already known by him were such as to put upon a man of ordinary intelligence the duty of inquiry. This principle was applied at the present term of this court in Foster v. Mansfield, etc., Railway, 146 U. S., 88, to a case where a stockholder in a railway company sought to set aside a sale of the road which had taken place ten years before, when the facts upon which he relied to vacate the sale were of record and within easy reach. See also Wood v. Carpenter, 101 U. S., 135, 141; Kennedy v. Green, 3 Myl. & K., 699, 722; Buckner v. Calcote, 28 Mississippi, 432; Cole v. McGlathry, 9 Maine, 131; McKown v. Whitmore, 31 Maine, 448.

"The duty of inquiry was all the more peremptory in this case from the fact that the property of itself was of uncertain character, and was liable, as is most mining property, to suddenly develop an enormous increase in value. This is actually what took place in this case. A property which, in October, 1880, plaintiff sold to Chatfield upon the basis of $4,800 for the whole mine is charged, in a bill filed October 21, 1887, to be worth $1,000,000, exclusive of its accumulated profits. Under such circumstances, where property has been developed by the courage and energy and at the expense of the defendants, courts will look with disfavor upon the claims of those who have lain idle while awaiting the results of this development, and will require not only clear proof of fraud, but prompt assertion of plaintiff's rights. Felix v. Patrick, 145 U. S., 317, 334; Hoyt v. Latham, 143 U. S., 553, 567; Hammond v. Hopkins, 143 U. S., 224; Great West Mining Co. v. Woodmas Mining Co., 14 Colorado, 90."

See also Naddo v. Barden (U. S. Cir. Ct. of Appeals), 51 Fed. Rep., p. 493, per Brewer, Justice.

This case involved a portion of the site of the City of Duluth and is quite analogous to the case at bar. The suit was brought seventeen years after the cause of action accrued. To excuse the delay plaintiff averred that for ten or twelve years he had lived in Canada, and that "until recently he had not learned that the transfers sought to be avoided," had been made, and that for ten years the attorney and others claimed that he had lost his rights in the land and that until recently he had been too poor to enforce them.

Held that he was guilty of laches, which the allegations of the bill did not sufficiently excuse.

Were there no testimony on the point, the court would presume that the family of George W. Remsen knew, many years ago, as a matter of family history, the fact that he was a soldier in the Mexican war at the time of his death. It is also a strict presumption of law that they knew, and were bound to know, all of the property rights conferred upon him by law, by virtue of his military service and as the result of his death. But the testimony makes it clearly apparent that the children of George W. Remsen, and his grandchildren, had knowledge, many years before this suit was commenced, of his military service and death.

Harriet A. Remsen was seventeen years old when the warrant was issued and became twenty-one years of age in 1852; Mary Ann Remsen became twenty-one in 1856; John Wesley Remsen became twenty-one in 1858; Elizabeth Remsen became twenty-one in 1861; George W. A. Remsen became twenty-one in 1863; Mary Ann Remsen, J. W. Remsen and G. W. A. Remsen died, respectively, in 1862, 1878 and 1882, all many years over twenty-one. The complainants, Hergesheimer and Beckman, are the children of Mary Ann Remsen, who was born in 1835 and died in 1882. Mary Remsen is the widow of George W. Remsen. Clara B. Remsen and Mabel Remsen are the children of George W. A. Remsen, who was born in 1842 and died in 1878.

Elizabeth Wetzel testifies that she had a lawyer to get her husband's wages; that she got a pension certificate and the lawyer got the land warrant (p. 39, fol. 67 et seq.), and told her he had it; that she went one evening and assigned the land warrant; that Harriet went with her and that she received payment for the warrant, but cannot remember the amount, whether it was $100 or not; that she told Harriet to sign the assignment; that she thought she ought to (p. 401); that she don't know what

the warrant called for, but heard other ones talking about other persons getting one hundred "and am not positive but one hundred and sixty acres;" heard different ones talking (p. 41); she went to the lawyer's office to sign this paper and get the money for it, and she signed the paper so it could be sold. He told her that she got $107 for it. Harriet went with her and signed the paper, too (pp. 48, 50); her children all knew that her father was a Mexican soldier, and that is about all they did know. They all knew when they grew up that he was in the Mexican war; she took the children to see the soldiers when they came home and they afterward knew she applied for a pension, and the children that were old enough to know knew that she got money, some of them did, as they got older, that she drew a pension (pp. 51, 53).

Mary J. Remsen, who married George W. A. Remsen, in 1864, deposes: That she knew that George W. Remsen was a Mexican soldier some time after she was married; suppose she heard it from her mother-in-law or husband; heard it discussed in the family that he was a Mexican soldier. Her mother-in-law was drawing a pension when the witness married, and lived in the same house with her (p. 65 et seq.). It was generally known in the family that George W. Remsen died in the Mexican war and that his widow received a pension (p. 69). She lived in Philadelphia about four years after she was married; Mrs. Wetzel lived with her most of the time; was very intimate with her and was told by her that her husband died in the Mexican war and having a hard time getting along with her children (p. 72 et seq.). Had heard her speak of Gen. Small attending to her business, attending to this pension (p. 73).

Clara B. Remsen, daughter of George W. A. Remsen, deposes: That prior to the meeting at Mayne's office in 1891, had heard her mother speak about the land and the claims of the heirs (p. 78). She knew that her grandfather was a Mexican soldier; had heard her grandmother say so often enough for her to know that he was a soldier; had known this fact a good many years; knew that her grandmother drew a pension ever since witness was quite small; they lived together and couldn't very well help knowing (p. 78).

John U. Hergesheimer, the husband since 1882 of Emma F. Becket, who was the daughter of Mary Ann Remsen, deposes: That he heard through the family in some way, and that it was generally known, that Mrs. Wetzel's first husband was aMexican soldier and died in the Mexican war. Had heard his wife speak of these things. Witness knows that Mr. Remsen's widow received a pension from the government and learned that from the family (p. 82).

John Wesley Remsen, who was born in 1837, deposes: That he knew, from his mother, that his father was a soldier in the Mexican war; thinks he saw him with his uniform on; that the family all knew that their father was in the Mexican war; that his mother drew a pension from the government. His mother told him so, and she told the older ones and they told the younger ones, witness supposes. Does not recollect anything about whether his mother was appointed guardian or not, but was before the court, he remembers. This witness was a soldier in the last war and knew that the soldiers got a bounty; had heard that Mexican soldiers and soldiers in the war of 1812 got them. Never inquired to find out whether his father got a bounty or not. After he grew up he never thought anything about it (pp. 90, 92).

Harriet Van Zant, who was Harriet A. Remsen, is sixty years old. Remembers seeing her father and that he went to the Mexican war; that was what the children were taught—that the father went to war and never came back; her uncle told her he was killed in the war. Her mother got a pension and was appointed guardian of the children. The children all went to the Orphans' Court with her (pp. 99, 100). She knew that her mother got a pension; knew when she drew it at the United States Mint (p. 102).

Emma F. Hergesheimer, daughter of Mary Ann Remsen, deposes: That it was generally known in the family that George W. Remsen was a Mexican soldier (pp 119, 120).

James W. Hopkins, the brother of the soldier's widow, deposes: That he knew of George W. Remsen being a soldier in the Mexican war, and that he died during the siege of Pueblo while Col. Childs was besieged there by the Mexican troops (p. 128); that after his death his widow got a land warrant; that

witness has known about it for a good many years; that she sold the warrant; that it was reported generally among the family that she had a land warrant and sold it; it was generally known among the children; witness' father sold his about the same time (p. 129).

Throughout their testimony, the various complainants strenuously endeavored to make it appear (some of them by explicit denials) that they had no knowledge or notice of the existence of this land warrant, of its assignment, or the issue of the patent, or of any of their alleged equities, until a short time before the month of August, 1891. They were closely pressed on cross-examination upon this subject. But it appears in contradiction of this, from the examination of George L. Hendrickson, who testified subsequently to the defendants (p. 194), that he went to Philadelphia some time between the seventh and fifteenth days of December, 1889, and then had a conversation with Elizabeth and Mary J. Remsen relative to this claim, and stated his errand to be to obtain a power of attorney from her and the heirs of George W. Remsen to obtain the title to lands in Minnesota. That Mrs. Wetzel thought she never had any land in the West that she knew of excepting that right under the Mexican warrant of George W. Remsen; that they had sold it; that witness told them that there was some right in the heirs and that there was a defect in the title. Witness told them that the land was located with a Mexican land warrant issued to the heirs of George W. Remsen; that he met Mr. William C. Mayne at Philadelphia at that time.

After this testimony had been taken, it was stipulated (p. 197) as facts in this case that in December, 1889, Mr. William C. Mayne, one of the counsel for the complainants, knew that the land warrant had been issued to the widow and heirs of Remsen; knew of its assignment and knew the property upon which the warrant had been located; that a patent had been issued to Taylor; that in December, 1889, he inspected the warrant assignment, appointment of guardian, and the patent, at the land de-

partment in Washington; that during December, 1889, and January and February, 1890, he communicated with all the complainants, excepting the heirs of George W. A. Remsen, the fact that a Mexican land warrant had been issued to said widow and heirs, and that there was a question of the validity of the sale and assignment thereof and a chance to claim the land located thereon, without disclosing to them the location of the land; that the question of giving power of attorney to another party than himself for the purpose of bringing suit and settlements was discussed; that the parties declined, at the time, to execute a power of attorney until they were informed of the location of the land and its value, which Mr. Mayne declined to give, because the parties for whom he was acting and who had discovered the alleged defect in the title had instructed him not to do so. That said negotiations continued until about May, 1890, when they were broken off, without ever having disclosed to them or any of the heirs such location or its value. That thereafter he did not act for said parties but did make a personal investigation, for the purpose of ascertaining the exact location of this land and its value and the parties in possession under such mortgage, and that on August 18, 1891, he caused the complainants to meet at his office, when he communicated to them, for the first time, the exact location of this land, and fully discussed the matters stated in the bill, and thereafter acted as their attorney. That prior to said time Mayne had not acted as attorney of the complainants in respect of any of the matters in controversy.

The law presumes conclusively upon the principle, alike applicable to civil and criminal responsibility, that every one is bound to know the law, that Remsen's heirs knew from the time they arrived at age of discretion that he was entitled to a land warrant as the legal consequence of his military service. This knowledge put them upon inquiry, and inquiry would have shown by record all the facts of which such complete ignorance up to August, 1891, is averred in the bill. If the party "had the means of knowledge or discovery in his power, he will be deemed to know all that, with ordinary care, he might have obtained knowledge of" (Shiras, J., in Sage v. R. R. Co., supra);

"every step taken in procuring the same" (i. e., the patent) "was made part of the public records of the federal * * * land departments which were open to the scrutiny of the public. The lands were offered for sale and sold to various purchasers, who entered into actual and open possession of the premises, and thus notice in every possible way was given to all the world that the defendants claimed the land with full right to sell and dispose of the same." (Id.)

"Under such circumstances the law raises an obligation on the part of the cestui que trust to make use of reasonable diligence in uncovering and unearthing the fraud and in applying to the courts for legal redress. In this case twenty-eight years elapsed from the time the scrip was procured of Sophia Felix, and nearly twenty-seven years from the time it went into the possession of Patrick, before the bill was filed. It admits of no doubt that if Sophia Felix and these plaintiffs had been ordinary white citizens, under no legal disability, such as those arising from infancy, lunacy or coverture, this lapse of time would be fatal to the recovery, at least unless it was conclusively shown that knowledge of the fraud was not obtained, and could not, by reasonable diligence, have been discovered within a reasonable time after it was perpetrated."

"A simple letter to the land department at any time after this scrip was located would have enabled them to identify the land and the name of the person who had located it." (Brown, J., in Felix v. Patrick, supra.)

The possession for many years of the defendants in the case at bar, and of those under whom they claim, was notice to these plaintiffs and to their predecessors. (Shiras, J., ante.) This was no obscure and unimproved tract. For years it has been a part of a great city, and for years before this suit was brought railroads, warehouses, stock yards, residences, business structures of all kinds, stood upon the site, a notice and challenge to all the world that the possessors who had thus invested hundreds of thousands of dollars in these improvements claimed full title to this property. It was at least sufficient for many years to put every person on inquiry and to charge every person with all the knowledge that such inquiry would impart.

There was, besides, an enormous increase in the value of the land itself, to $1,000,000 (see ante. in statement of the case)—grown to be worth about 6,000 times more than it was when it was entered.

But the evidence presents a case of laches entirely independent of legal presumptions of knowledge, notice or acquiescence. It is that laches of the plaintiffs from December, 1889, when they were sufficiently (we think fully) informed of all the facts (by Hendrickson, p. 194), until June, 1892, when this suit was commenced. In the nineteen months between these dates these plaintiffs were absolutely inert; they brought no suit, gave no notice to occupants, made no demand, started no rumor, but were as silent and passive as they and their predecessors had been from the beginning.

There was no ignorance either of fact or law to excuse this. These plaintiffs were learned in the law of laches. That fact indubitably appears in the testimony of very one of them, elsewhere referred to, where by evasion, quibble and denial each sought to make it appear that he or she had no knowledge and had never heard about this matter or their rights until about August, 1891. Hendrickson testified afterwards, and his testimony was a portion of the effectual means which produced the stipulation (p. 194) which, with Hendrickson's testimony, so effectually contradicts and retracts the prevarications and denials as to date of obtaining knowledge to which we have referred.

Now, nineteen months' delay under the facts of this case constitutes laches, under many of the authorities that we have cited. In Felix v. Patrick, the heirs of the half-breed asserted that they were in ignorance and under disability up to 1887. Their bill was filed in 1888. It affected property in the City of Omaha, and the situation of the defendants and the merits of their case were much the same as in the case at bar. Yet the court held the laches a bar.

The bill is insufficient in its allegations to excuse laches under the doctrine of Badger v. Badger (2 Wall., 307) and other cases cited; while the evidence shows most conclusively laches by these complainants and their predecessors for forty years, and especially shows gross laches from the time when they received full information in December, 1889, up to the date of the commencement of this suit in June, 1892.

III.

THE WARRANT IN QUESTION WAS PERSONAL PROPERTY AND WAS ASSIGNABLE BY THE GUARDIAN OF THE MINORS.

"Real property consists of freehold estates in land, i. e., of estates of inheritance or for life. * * * Personal property embraces all objects or rights which are capable of ownership, except freehold estates in land, and incorporeal hereditaments issuing thereout or exercisable within the same. The word 'chattel' * * * embraces all property not freehold. * * * Personal property as above defined comprises leasehold estates and other interests in land less than a freehold."

Brantley Pers. Prop., sec. 2.

"Every species of property, movable or immovable, which is less than a freehold must be a chattel."

1 Schouler Pers. Prop., sec. 8.

3 Am. Cycl. of Law p. 163.

"Chattels is a very comprehensive word, and includes every kind of property which is not real estate or a freehold."

3 Cycl. of Law, 164.

Many authorities fully sustain the proposition that this land warrant was personal property.

Statutory restrictions of assignability are not favored and are construed strictly.

Mullen v. Wine, 26 Fed. Rep., 206.

Randon v. Barton, 4 Tex., 289.

Rose v. Wood, 73 Cal., 385.

Knight v. Leary, 54 Wis., 459.

Townsend v. Fenton, 30 Minn., 531.

Lamb v. Davenport, 18 Wall., 307.

Myers v. Croft, 13 Wall., 291.

Thredgill v. Pintard, 12 How., 15.

Maxwell v. Moore, 22 How., 185.

French v. Spencer, 21 How., 228.

Strongfellow v. Caine, 99 U. .S, 610.

Hussey v. Smith, 99 How., 20.

Doe v. Wilson, 23 How., 458.

Graham v. Henry, 17 Tex., 167.

Stone v. Brown, 54 Tex., 334.

Cox v. Bray, 28 Tex., 248.
Dodge v. Little, 73 Tex., 319.
Hearne v. Gillett, 62 Tex., 25.
Lipscomb v. Nichols, 6 Colo., 290.
Webster v. Luther, 50 Minn., 77.
S. C., 163 U. S., 331.

The act of February 11, 1847, under which this warrant was issued, provides for the issue of a warrant for 160 acres which may be located by the warrantee or his heirs at law, upon any public lands subject to private entry, and for the issuance of a patent therefor upon the return of the warrant to the general land office. In the event of the death of the soldier, the warrant shall issue in favor of and inure to the benefit of his family; first, to the widow and his children, etc., etc. If his children are minors, then the legally constituted guardian of such minor children shall, in conjunction with such of the children, if any, as may be of full age, upon being duly authorized by the Orphans' or other court having probate jurisdiction, have the power to sell and dispose of such warrant for the benefit of those interested.

It is not to be considered that congress intended to legislate upon the status of minors in Pennsylvania or as to their property rights or as to the powers of guardians appointed by the state court. Congress could provide that the United States would not recognize any assignment of the warrant unless made under certain circumstances and in a certain way. The provision in regard to assignments in this act was inserted not as a regulation or restriction of the common law or (state) statutory power of a guardian. It was for the protection of the United States in its dealings with the warrant, and could have been waived by it.

A guardian may, without order of court, sell personal property of the ward in his possession. This is an ancient rule of the common law, and statutes giving this power are merely declaratory and cumulative.

The guardian "may sell the personal estate for the purposes of the trust without a previous order of the court."

2 Kent Com. Marg., p. 288.

Field v. Schieffelin, 7 Johns., Ch. 154.

Ellis v. Essex M. Bridge, 2 Pick, 243.

Lamar v. Micou, 112 U. S., 452.

Even where a statute provides that the Probate Court may authorize and require the guardian to sell personal property, such a provision is cumulative and permissive, not mandatory, and does not take away or impair his common-law right to sell without such authority.

This is clearly held in Wallace v. Holmes, 9 Blatchf., 65-77 (25 Myers Fed., 132), where a statute of Massachusetts so provided, and a guardian without applying to the Probate Court, and without any authority or approval by it, assigned the interest of his minor ward in a patent to an invention. The assignment was sustained as valid at common law.

"Upon being duly authorized by the Orphans' or other court having probate jurisdiction" is the language of the act of congress. It does not say "by order" or "by direction" of such court.

If at common law or by the laws of Pennsylvania, the letters of guardianship issued by the Orphans' Court, invested, as they did, the guardian, with the power to sell personal property, they were under such statutes his "due authority" and they "duly authorized" him so to do, and as to the transfer of this warrant, this guardian was "duly authorized" to make the assignment to Taylor.

And this is precisely what the officers of the United States general land office held (if we concede that there was no special order of the Orphans' Court) in the course of proceedings under which the patent issued. The testimony shows (p. 203) that this warrant was deposited by Taylor as assignee in the local land office, was there located by him as assignee, and was received in satisfaction of the location.

No statute of the United States ever enacted that such warrants are real estate. All the statutes ever enacted upon the subject treat them as personal property; for instance, the statute of June 3, 1858, sec. 2444 R. S., provides:

"When proof has been or hereafter is filed in the pension office, during the lifetime of a claimant, establishing to the satisfaction of that office his right to a warrant for military services, and such warrant has not been, or may not be, issued until after the death of the claimant, and all such warrants as have been heretofore issued subsequent to the death of the claimant, the title to such warrants shall vest in his widow, if there be one, and if there be no widow, then in the heirs or legatees of the claimant; and all military bounty land warrants issued pursuant to law shall be treated as personal chattels, and may be conveyed by assignment of such widow, heirs or legatees, or by the legal representatives of the deceased claimant, for the use of such heirs or legatees only."

This act of 1858 expressly provides that all military bounty land warrants theretofore issued subsequent to the death of the claimant, pursuant to law, shall be treated as chattels.

We insist that the act of 1858, as to past and future assignments of warrants, placed such documents upon the ground of personal property and made them assignable as to past and future assignments without the order of any court. The regulation of the manner of assignments is a matter between the government and the person entitled to the warrant, and it would be a strange condition of the law if all warrants up to 1858 were real estate, and all warrants after that year were personal property, and each class governed by different rules of assignment, by absolute want of such power in some cases and of absolute power to assign in other cases according to their classification as to time.

Again, the act of March 22, 1852, sec. 2414 R. S., provides that:

"All warrants for military bounty lands which have been or may hereafter be issued under any law of the United States, and all valid locations of the same which have been or may hereafter be made, are declared to be assignable by deed or instrument of writing, made and executed according to such form and pursuant to such regulations as may be prescribed by the commissioner of the general land office, so as to vest the assignee with all the rights of the original owner of the warrant or location."

These two statutes of 1852 and 1858 removed by relation th necessity, if there ever was any, of having any order of the O phans' Court for the assignment of the interest of the infan heirs in the warrant, such provision in the act of 1847 being, a we insist, simply a matter between the government and the hei for the protection of the government, which the governmen might waive.

Cooley, Const. Lim., 5 Ed., 458.
2 Hare, Am. Const. Law., 742.
Satterly v. Matthewson, 13 S. & R., 380.
S. C., 2 Peters, 380.
Wilkinson v. Leland, 2 Peters, 667.
Hess v. Works, 2 S. & R., 356.
Davis v. St. Bank, 7 Ind., 316.

Brush v. Ware, 15 Peters, 93, will doubtless be cited by th appellants. It is to be observed that this case was decided i 1841. The defense of limitation or laches does not seem to hav been considered or even suggested. It was assumed, withou argument, by the court, that the ancestor's right to locate 4,00 acres of land was real estate which did not pass by his will an which the executor had therefore no right to alienate. It als appeared that the transaction by which Ladd, under whom th defendants claimed, obtained the certificates was by a fraudu lent contract with the executor and for a grossly inadequate consideration, viz., $40 and a pair of boots. The case was decid ed upon peculiar and exceptional grounds applicable to the lo cation of such military claims in Ohio and Kentucky, which hav restricted the application of the decisions of the Supreme Cour in questions as to titles in those states. The warrant entitled t locate lands in Ohio. It was a Virginia warrant, and such war rants were real estate by the laws of Virginia and Ohio.

"It may be stated that in some of the states land warrants are not regarded as real estate in the settlement and distribution

of estates in the Probate Office. (Moody v. Hutchinson, 44 Me., 57.) But a different doctrine is held in Virginia and Ohio, in respect to the land, where one who is entitled to a patent dies before it is issued. The right, unless devised, goes to his heirs."

3 Washb., Real Property, 4 Ed., p. 200, citing:

Brush v. Ware, 15 Pet., 93.

Reeder v. Barr, 4 Ohio, 458.

Brush v. Ware was a case of actual fraud perpetrated by the executor upon the heirs. The court went behind the patent because, as it said:

"Whatever doubt might arise on this question of common law principles, there can be none when the peculiar circumstances under which this title originated are considered. In Ohio and Kentucky this question has long been settled judicially, and this court, following the decision of those states, has also decided it."

Brush, as assignee of the warrants, obtained the patent in his own name. And the court said (p. 111):

"Can it be contended that the defendant who purchased an inchoate title, a mere equity, was not bound to look into the origin of that equity?"

Some of the plaintiffs were minors at the time of the commencement of the suit.

So that the Brush case would be an authority here only if the Remsen heirs had sued Taylor, the assignee of the warrant, immediately after he received the patent.

Notwithstanding this expression of Mr. Washburn's stating an early Ohio case for its support, it was held in Dixon v. Caldwell, 15 Ohio St., 412, that the bona fide purchaser of a land warrant for value, who is chargeable neither with notice or want of diligence in making his purchase, after locating the warrant and obtaining a patent for the land located, is not, in equity, a trustee of the legal title of the true owner of the warrant, although it was obtained by the fraud of a third person and transferred under a forged assignment. For the conversion of the warrant, the legal owner has a clear right to recover its value at the time of the conversion, the good faith of the purchaser being no defense to the legal demand. The court said:

"The controversy here is not solely in regard to the land warrant. The legal title to that was clearly vested in the plaintiff,

and for its conversion he has a plain, legal remedy against the defendant for its value, and, before it was lost in entering the land, for its recovery in specie. The question is whether in the light of equity the measure of legal relief is to be regarded as inadequate and the defendant required by court of equity to surrender the land to which he acquired the legal title in good faith, and, as he supposed, for his own benefit, by the combined use of the warrant and his own means, industry and enterprise.

"The defendant claims to be a bona fide purchaser of the land in controversy for value, without notice of the plaintiff's rights, and relied for his defense upon the rules of equity for the protection of such purchasers.

"The land warrant in question was assignable in law, was in possession and apparent ownership of the vendor, and the assignment was regular in form. The defect in the vendor's title was not apparent, and there was no reasonable ground for suspicion that the assignment had been forged. The defendant purchased and paid full value for the warrant and is not chargeable with a want of reasonable diligence in so doing. Having no reason to suspect the existence of the plaintiff's title to the warrant, he was, in equity and good conscience, chargeable with no duty toward him in relation to its future use. If he withheld it from entry he would have been liable to return it to the plaintiff or pay him its value. The good faith of his purchase would have been no answer to the plaintiff's legal demand. After the location of the warrant, the holder of the legal title thereof acquired an equity in the land upon which the location was made, and before the defendant clothed himself with the legal title, and while the equities were open between the parties, Caldwell's equity being older in time would have been better in right. But Dixon, unaffected with fraud or notice, upon a valuable consideration paid, having obtained the legal title to the land in controversy, brings himself within the protection awarded in equity to the letter of the legal estate."

No guardian was appointed for Harriet A. Remsen, who was seventeen years of age and a married woman when she signed her maiden name to the assignment of the warrant. This assignment by her was not void, but was voidable merely.

"All the books are said to agree in one result that whenever the act done may be for the benefit of the infant it shall not be considered void, but he shall have his election, when he comes of age, to affirm or avoid it."

2 Kent, Com. Marg., p. 234.

In such cases he is bound to give notice of disaffirmance of the contract in a reasonable time after coming of age. (Holmes

v. Blogg, 8 Taunt., 35; Goodnow v. Empire Lumber Co., 31 Minn., 468, cited ante, as to laches.)

But were her assignment void by reason of infancy or coverture, her case would stand upon the principles declared in Felix v. Patrick, and Dixon v. Caldwell. In the former case the assignment of the scrip was absolutely void because prohibited by statute. In the latter the assignment was a forgery. Both courts held the action barred, upon the general equitable grounds stated in the opinions from which we have presented full quotations.

For many years the right to assign "soldiers' additionals" has been contested in the courts, and has been sustained. In the process of these adjudications the method and form of the assignment in many cases raised the question, sometimes directly, sometimes indirectly, whether these "soldiers' additionals" are, before location, personal estate or real estate. We have found no decision holding them to be real estate. On the contrary, several courts have expressly held them to be personal property, and all the courts which do not explicitly so hold treat them as such by necessary implication. And necessarily so, because, if they were real estate, they could be transferred only by formally executed deeds.

The question as to the assignability of soldiers' additionals has finally been settled by this court in Webster v. Luther, 163 U. S., 331. The opinion sets forth in full the very complicated legislation out of which these questions arose. In its opinion this court says:

"The beneficiary was left free to select this additional land from any portion of the vast public domain described in the act, and free to apply it to any beneficial use that he chose. It was an unfettered gift in the nature of compensation for past services. It vested a property right in the donee. The presumption is that congress intended to make this right as valuable as possible. Its real value was measured by the price that could be obtained by its sale. The prohibition of its sale or disposition

would have made it nearly, if not quite, valueless to a beneficiary who had already established his home on the public domain. Any restriction upon its alienation must decrease its value. We are unable to find anything in the acts of congress or in the dictates of an enlightened public policy that requires the imposition of any such restraint. On the other hand, the general rule of law which discourages all restraints upon alienation, the marked contrast between the purpose and the provisions of the grant of the right to the original homestead, and the purposes and provisions of the grant of the right to the additional land, and the history of the legislation which is codified in the existing homestead law, leave us without doubt that the assignment before entry of the right to this additional land granted by sec. 2306 of the Revised Statutes contravenes no public policy of the nation, violates no statute, and is valid as against the assignor, his heirs and assigns."

That a deceased soldier's additional right belonging to his minor children is assignable by their guardian as personal property, and that an order of court is not necessary to empower him to do so had been previously held by Mr. Justice Brewer in the case of Mullen v. Wine, 26 Federal Rep., 206. The minor children of the soldier became entitled to locate and enter eighty acres of public lands as an additional homestead. They resided in Minnesota, and their guardian sold this right and received the money for it.

The court says:

"There are really but two questions in the case: First, was this right to locate and enter personal property? Second, was it assignable? For that the guardian, under the laws of Minnesota, could, without any order of court, sell personal property belonging to his ward is conceded. That he did sell this right, and did receive the stipulated price, is beyond doubt. If the title once passed from the minors to Talbot, that is the end of the matter. Any wrong in the location and entry, if wrong there was, was one which only the government could challenge, and could not be made by a private individual, even the minors themselves, the basis of attacking complainant's title.

"Now, this right to enter and locate eighty acres was a thing of value—something which enlarged the estate of the minors—was property. It was personal property, going with them where they went; could be exercised and enjoyed anywhere; did not descend to the heir; was not attached to any particular tract of land; was therefore neither permanent, fixed nor immovable. It was a mere right of selection and taking. Like all property,

it was the subject of sale. The right to sell property need not in terms be granted; it exists if it is not in terms withheld. To preserve the Indian's title an express restriction is inserted in the patent. The same or something equivalent is always necessary to stay the power of disposal which attends the ownership of property. When this right has been exercised, the location and entry made, who would doubt the right to sell the land? Yet why should the right to sell exist after entry and not before? Congress has placed no restriction—who may? It must be borne in mind that this is not a case in which there is to be future consideration or future duty. It is personal, in that only they of a certain class can avail themselves of the gift. It is not personal in the sense that future services or future conditions are imposed. Services already rendered during the war are the consideration. The homestead duty of occupation or improvement has already been performed. It amounts to simply this: In view of what has been done, congress makes this gift. It places no restrictions on the donee, but leaves him to use the gift as he sees fit. Why may he not sell it?

"I see no satisfactory reason to the contrary. Hence I answer the two questions in the affirmative."

It is familiar doctrine, as to properties of the character of military bounty lands, that they are assignable in all cases not prohibited by statutes. Among many decisions to this effect we cite:

Myers v. Croft, 13 Wall., 291.

Townsend v. Fenton, 30 Minn., 531.

Camp v. Smith, 2 Minn., 172.

Maxwell v. Moore, 22 How., 185.

Lamb v. Donenfast, 18 Wall., 307.

In holding such rights assignable the maxim is repeated in nearly all decisions that "restraints upon the right to alienate property are not favored."

In Rose v. Wood and Lumber Company, 73 Cal., 285, the Supreme Court of California held that soldiers' additionals were assignable. The same conclusion was reached by the Supreme Court of Wisconsin in Knight v. Leary, 54 Wis., 459.

The courts have universally held strongly against restrictions upon alienation, and in many cases kindred to that at bar, involving the assignability of similar rights such as additional rights of location under the Texas land laws, mineral rights; the rights under the Oregon donation act, occupants' rights under the townsite law, and various other rights granted by congress

and by the several states, to locate lands—such rights have been held personal property and assignable whenever not specifically prohibited by the statute creating the right, and in some instances, notably the Oregon donation act, the courts placed the strictest construction possible upon the provisions of the act in restraint of alienation. (Lamb v. Davenport, 18 Wall., 307.)

And here we repeat that if the land warrant here in question was the personal property of certain minors resident in Pennsylvania for whom a guardian had been appointed by the Orphans' Court of that state, that guardian had the common law right to assign the warrant. He derives it under the common law through his appointment as guardian by the Orphans' Court, which, by such appointment, did authorize him to do all things that a guardian might do at common law; hence the appointment was a sufficient authorization by the Orphans' Court to assign this certificate.

In Myers v. Croft, 13 Wall., 291, the prohibition of alienation was as follows: "And all assignments and transfers of the right hereby secured prior to the issuing of the patent shall be null and void." The Supreme Court held that a conveyance of the land by the pre-emptor, after entry and payment for the same, but before the issue of the patent, was valid. The court says:

"This was the right to pre-empt a quarter section of land by settling upon and improving it, at the minimum price, no matter what its value might be when the time limited for perfecting the pre-emption expired. This right was valuable, and, independently of the legislation of congress, assignable."

Lamb v. Davenport, 18 Wall., 307, was a construction of the Oregon donation act, which declared that all contracts by any person or persons for the sale of the land to which he may be entitled under the act before he, or they, shall have received patent therefor shall be void.

So also Maxwell v. Moore, 22 Howard, 185, construing the act of 1812 (2 Stat., 429) and the act of 1826 (4 Stat., 190) concerning the granting of military bounty lands. The act of 1812 prohib-

ited the assignment or transfer in any manner of any claim for the warrant until after a patent should have been granted. The act of 1826 was upon the same general subject, but contained no such restriction. It was insisted that the acts were in pari materia, and that, therefore, the restriction in the act of 1812 was operative. This court, however, held otherwise.

See also French v. Spencer, 21 Howard, 228.

Under an act passed in 1816 (3 Stat. at Large, 256) the same question arose as in the case last cited, and the same decision was made.

This court has come to the same conclusion as to the assignability of an inchoate right to a deed under the townsite act.

Stringfellow v. Caine, 99 U. S., 610.

Hussey v. Smith, 99 U. S., 20.

In Doe v. Wilson, 23 Howard, 458, the treaty of October, 1832, between the United States and the Pottawotomie Indians contained the following provision:

"The United States agree to grant each of the following persons the quantity of land annexed to their names, which land shall be conveyed to them by patent. * * * To Pet-chi-co two sections," etc., etc. Then the treaty provided: "The foregoing reservations shall be selected under the direction of the president of the United States after the land shall have been surveyed and the boundaries to correspond with the public surveys."

Before the lands were selected Pet-chi-co sold and assigned his interest, but died before the patent was issued. After his death a patent was issued in his name. Held, that the land passed by relation to his assignee, and one of the questions argued was whether this right was assignable. The court said:

"Although the government alone can purchase lands from an Indian nation, it does not follow that when the rights of the nation are extinguished an individual of the nation who takes as private owner cannot sell his interest. The Indian title is property, and alienable, unless the treaty had prohibited its sale."

Under the various statutes of Texas, persons who had taken public lands became entitled to "additional" lands under certain circumstances. The Supreme Court of Texas has considered the assignability of such certificates in many cases, and held them

assignable by formal assignment or under blank powers of attorney, or even orally and by delivery.

Randon v. Barton, 4 Texas, 289.

Graham v. Henry, 17 Texas, 167.

In the case of Stone v. Brown, 54 Texas, p. 334, the court said:

"These transfers were in every respect complete, save and except the blank for the name of the vendee and consideration were not filled. In our opinion, this did not render the transfers invalid. (See Hollis v. Dashiell, 52 Tex., 187.) Aside from this view, our Supreme Court has from the first held and treated unlocated land certificates as personal property, so far considered chattels, that they are the subject of verbal sale and delivery, and that such sales are not within the statute of frauds and need not be in writing. (See also Cox v. Bray, 28 Texas, 247.) The contract was not for the sale of land. It was for the sale or assignment of the unlocated certificate. The certificate of itself did not give to or vest in the grantee a title to the land, but a right to acquire it. It was merely the obligation of the government, entitling the owner of it to secure the designated quantity of land by following the requirements of the law."

See also Dodge v. Litter, 73 Texas, 319; Hearne v. Gillett, 62 Texas, 25.

It is well to note in reference to the certificates considered in these Texas cases that they were very similar to the "additional" certificates issued by the United States, and the military bounty land warrants. They were issued under the rules of the land department of Texas; they were merely certificates of the right to locate anywhere in the public domain a certain quantity of land, and by such location acquire the title to the land so located; some of them were additional bounty for military services rendered; some were settlers' additionals; but all were mere rights similar to those conferred by a military bounty land warrant.

The grounds upon which the courts base their opinions that these rights were assignable as personal property, are similar to the reasons given by Justice Brewer and the other courts for the assignability of the "soldier's additional" and other similar rights granted by acts of congress.

The Supreme Court of Minnesota has consistently held against restrictions upon the right of alienation. In Camp v. Smith, 2 Minn., 172, decided in 1858, long before the decision of the Supreme Court of the United States in Myers v. Croft, the Supreme Court of Minnesota arrived at the same conclusion, and, considering whether a conveyance of land after final entry and before patent was prohibited by the restrictive clause in the pre-emption law, said:

"Land in the United States is as much the subject of traffic almost as merchandise, and that trade is rather encouraged than restricted by law. Half the titles in the new states and territories would be unsettled if a transfer of the land by a pre-emptor is prohibited before the issuing of the patent. On grounds of public policy, therefore, such an interpretation should be given to the pre-emption law as will not interfere with the free transfer of lands in the state; and to that end it should, if necessary, be strictly construed, so as not to prohibit the assignment or transfer of anything not specifically and unmistakably designated."

That court also held, in Townsend v. Fenton, 30 Minn., 531, that a contract made by a homesteader, under the original homestead law, to convey the property to be acquired by the homesteader after he should receive the patent therefor, was not interdicted by the provisions of sec. 2291 of the Revised Statutes of the United States, and the court has consistently adhered to its position in the cases of Red River, etc., R. Co. v. Sture, 32 Minn., 95; Lewis v. Wethrell, 36 Minn., 386; Lang v. Morey, 40 Minn., 396.

IV.

WHETHER THE ORPHANS' COURT HAD AUTHORIZED THE GUARDIAN TO SELL AND ASSIGN THIS WARRANT IS A QUESTION OF FACT WHICH WAS TO BE AND WAS CONSIDERED BY THE DEPARTMENT OF THE INTERIOR IN ISSUING THE PATENT. THE DETERMINATION OF THE DEPARTMENT UPON THIS QUESTION IS CONCLUSIVE UNDER THE CIRCUMSTANCES OF THIS CASE.

In Lee v. Johnson, 116 U. S., 48, it was sought in equity to have the holder of a patent of public land declared a trustee for

the benefit of the complainant, on the ground that the patent was improperly issued. The plaintiff entered the land in controversy as a homestead. After the entry he resided upon the land only occasionally, offering as an excuse that the health of his wife required him to remain at their home in Kent county. At the outset he employed his son-in-law Shaeffer and his family to go upon the land and remain there in his employ until his wife's health should be so improved as to admit of his leaving her, or taking her with him in his personal settlement upon the land. Afterwards some attempts were ostensibly made toward a personal settlement, but they were at long intervals apart and for comparatively short periods. Lee complained to the land office that Johnson had abandoned the land for more than six months, and a contest took place between them as to the right to the land. The usual proceedings were had before the register, and the commissioner decided in favor of Johnson. On the appeal, the decision was reversed by the secretary and the entry ordered to be canceled. Lee then entered it under homestead laws and received the patent. The court said:

"The court does not interfere with the title of a patentee when the alleged mistake relates to a matter of fact concerning which those officers may have drawn wrong conclusions from the testimony. A judicial inquiry as to the correctness of such conclusions would encroach upon a jurisdiction which congress has devolved exclusively upon the department. It is only when fraud and imposition have prevented the unsuccessful party in a contest from fully presenting his case, or the officers from fully considering it, that a court will look into the evidence. It is not enough, however, that fraud and imposition have been practiced upon the department, or that false testimony or fraudulent documents have been presented. It must appear that they affected its determination, which otherwise would have been in favor of the plaintiffs. He must, in all cases, show that but for the error or fraud or imposition of which he complains he would be entitled to the patent. It is not enough to show that it should not have been issued to the patentee. It is for the party whose rights are alleged to have been disregarded that relief is sought, not for the government, which can file its own bill when it desires the cancellation of a patent unadvisedly or wrongfully issued. * * *

"Without going into any detail of the evidence presented to the commissioner and the secretary of the interior, but taking the general statement of its nature, it is clear that their attention was drawn by it to the character of the settlement of John-

son, and that they considered whether his entry was made to acquire a home for himself or for his son-in-law, whether his residence had been sufficiently personal and continuous to save and perfect any right, if, in fact, he had ever initiated any, and whether or not he had abandoned the land. The findings of the secretary upon any of these matters must be taken as conclusive in the absence of any fraud and imposition such as we have mentioned. Upon this point it is only necessary to refer to the cases where this conclusive character of the action of the department upon matters of fact cognizable by it has been expressly affirmed."

Johnson v. Towsley, 13 Wall., 72.
Shepley v. Cowan, 91 U. S., 330, 340.
Moore v. Robbins, 96 U. S., 530, 535.
Quinby v. Conlan, 104 U. S., 420, 426.
Smelting Co. v. Kemp, 104 U. S., 636, 640.
Steele v. Smelting Co., 106 U. S., 447, 450.

"Undoubtedly there has been in all of them (i. e., cases) some special ground for the exercise of the equitable jurisdiction. for this court does not and never has asserted that all the matters passed upon by the land office are open to review in all the courts. On the contrary, it is fully conceded that when these officers decide controverted questions of fact in the absence of fraud or imposition or mistake, their decision on these questions is final, except as they may be reversed on appeal in that department."

Johnson v. Towsley, 13 Wall., 86 Op.

V

A PATENT RAISES A PRESUMPTION THAT ALL OF THE PREVIOUS REQUISITES OF THE LAW HAVE BEEN COMPLIED WITH. THAT PRESUMPTION, UNDER THE CIRCUMSTANCES OF THIS CASE, IS CONCLUSIVE.

If it was necessary for the Orphans' Court, by some specific order, to authorize the guardian to assign the warrant, it will be presumed that such authority was given, for the following reasons: 1. The patent raises that presumption at any time. 2. The lapse of time since the granting of the patent, the open possession, the rise in value, the improvements upon the prop-

erty, its becoming a portion of a great city, the inaction of the heirs, and all the circumstances and evidence create such a presumption and make it conclusive.

Discussing the law of presumptions, in support of titles and other rights from lapse of time, Mr. Best observes:

"There is hardly a species of act or document, public or private, that will not be presumed in support of possession. Matters of record generally, and even acts of parliament, at least very ancient ones, will thus be presumed, * * * as also writs of ad quod damnum and inquisitions thereon, fines and recoveries; * * * consent of the ordinary to composition deeds, * * * and lawful executorship will be presumed from lapse of time."

2 Best, Ev., sec. 393.

"Presumption of title need not be founded upon what is believed to have happened, but upon what may have happened."

St. Mary Magdalen College v. Atty. Gen., 3 Jur. (N. S.), 675.

"The laws for the sale of public lands provide many guards to secure the regularity of grants, to protect the incipient rights of individuals and also to protect the state from imposition. Officers are appointed to superintend the business, and rules are framed prescribing their duty. These rules are in general directory; and when all proceedings are completed by a patent issued by the authority of state, a compliance with these rules is pre-supposed. That every pre-requisite has been performed is an inference properly deducible, and which every man has a right to draw, from the existence of the grant itself. It might, therefore, be extremely unreasonable to avoid the grant in any court for irregularities in the conduct of those who are appointed by the government to supervise the progressive course of a title from its commencement to its consummation in a patent."

Polk v. Wendal, 9 Cr., 98.

"A grant or a concession made by that officer by law authorized to make it carries with it prima facie evidence that it is within his powers; no excess of them or departure from them is to be presumed; he violates his duty by such excess and is responsible for it. He who alleges that an officer entrusted with an important duty has violated his instructions must show it." See also, to the same effect, the expressions of the Supreme Court of Minnesota in McKinney v. Bode, 39 Minn., 350, supra.

Delassus v. U. S., 9 Pet., 134, Opinion.

2. As to the presumption from lapse of time.

"Where it is shown that any person has for a long period of time exercised any proprietary right which might have had a lawful origin by grant or license from the public, or from the

private person, and the exercise of which might, and naturally would, have been prevented by the persons interested if it had not had a lawful origin, the presumption arises that such right had a lawful origin and that it was created by a proper instrument which has been lost."

Lawson, Presumpt. Evidence, p. 403, and cases cited in note.

In Strimpfler v. Roberts, 18 Pa. St., 299, Chief Justice Black, in considering the presumptions created by lapse of time as affecting disputes as to land, uses this language:

"It is true that the transaction which creates the contest between these parties is entirely too old to be investigated now with the slightest hope of ascertaining the truth. It is impossible for us to feel any confidence in the evidence which can be furnished by men of these times concerning occurrences so remote. Fifty-two years went round between the time when the purchase money for this land was paid and the bringing of the present suit. During all that time neither Benson, nor his heirs, nor anybody else deriving title from him, made any claim to the land, nor paid taxes for it, nor exercised any act of ownership over it, nor manifested the least sign of consciousness that they had a title to it. We are now asked to determine the rights of the parties, on such facts as can be fished up from the oblivion of more than half a century. Nearly two generations have lived on the earth and been buried in its bosom since this business was transacted. Of the men who were then in active life and capable of being witnesses, not one in twenty thousand is now living. Written documents whose production might have settled this dispute instantly have been, in all human probability, destroyed or lost or thrown away as useless. The matters to a past age, of which we can have no knowledge except what we derive from history, through whose medium we can dimly discern the outline of great public events, but all that pertains to men's private affairs is wholly invisible, or only visible in such sort as to confound the judgment. 'No man,' says Mr. Justice Sergeant, 'ought to be permitted to lie by, while his rights can be fairly investigated and justly determined, until time has involved them in uncertainty and obscurity, and then ask for an inquiry.' For such reasons as this it is that every civilized society has fixed a limited time within which all rights must be prosecuted. Where this is not done by positive enactment of the legislature, the judiciary calls in the aid of a presumption; and courts of equity, though not bound by the statutes of limitation, close their doors against stale demands as sternly as the courts of law. Time will raise presumptions as conclusive for or against an original title as it will in other cases. We have as little power to read the ashes of burnt papers, or call dead witnesses from their graves to testify in a dispute about business transacted by the land-jobbers of the last century, as we

would have if the controversy was on any other subject. It is accordingly settled that the non-return of a survey for some years, without taking possession or paying the surveyor's fees, is an abandonment of the warrant. And even when the negligence is imputable to the officer, a long delay will defeat the warrantee's title. The title of a warrantee is presumed to have been conveyed, where no claim is made under it for a long time. A sale of warranted land for taxes, though irregular and void, if the warrant holder had made early opposition, becomes a perfect title after an acquiescence of twenty-four years. Payment of taxes for twenty-one years is presumptive evidence of a conveyance from the warrantee. A survey unimpeached for twenty-one years is conclusively believed to have been regular; and that even where there is an unexpected order of resurvey by the board of property. In short, the courts of this state seem uniformly (and especially of late) to have refused to go back more than twenty-one years to settle any difficulty about the issuing of warrants or patents, or the making or returning of surveys, or the payment of purchase money to the commonwealth. These questions, like others, are disposed of according to the legal presumptions which arise from the lapse of time. The time which raises a presumption which will act on an interest in land is twenty-one years; and this presumption unrepelled will defeat any claim that is set up against it."

So in the present case, if it shall be deemed necessary that the Orphans' Court should by special order have authorized the guardian to assign this warrant, it will be conclusively presumed, after the lapse of forty-three years from the date of the assignment of the warrant, that such special order was made.

Under the circumstances of this case we insist that such presumption is absolute and incontrovertible. But if it is open to rebuttal, the proof fails in that respect. In fact, there is not foundation sufficient laid to prove by parol in an ordinary case the contents of an instrument asserted to be lost.

Mr. Fortin, the first assistant clerk in the Orphans' Court, deposes (p. 54) that the only record he can find is the petition for the appointment of guardian, filed October 6, 1848. The only search he made for any other record or proceedings was in the indexes to the dockets; as to there being any other papers in the case he only knows from searching the index and the docket; that though the original papers may be lost, there is always a docket entry showing some paper having been filed.

This we submit is wholly insufficient to controvert the presumption that such an order was made.

If it was necessary by order to empower an assignment its existence will be presumed upon another ground, viz.: That public officers have done their duty, have proceeded regularly according to law. Now the officers of the department of the interior must, if this order were necessary, have passed upon the fact of its existence. The theory of the complainants is that the patent could not legally issue to Taylor, unless the assignment of the warrant by the guardian had been specifically authorized by the Orphans' Court. So that, under the above rule, it must be presumed that such order existed and that the officers of that department had it before them. The patent shows that it was issued on a warrant issued to minors among others. There is no testimony of any search in the department for any such order.

VI.

BY EXPRESSLY RATIFYING THE LOCATION OF THE WARRANT IN THE BILL, THE COMPLAINANTS RATIFY THE ASSIGNMENT OF THE WARRANT TO TAYLOR, AND DISENTITLE THEMSELVES TO ANY RELIEF.

The bill states: "Your orators have and do hereby ratify the location of said military land warrant on the land above described, and say that the defendants * * * are the trustees of the said lands for the benefit of your orators."

The assignment of the warrant to him was an indispensible process in the location thereof by Taylor and in the issuance of the patent to him. Hence in ratifying the location of the warrant the complainants ratify its assignment.

No fraud is charged in the bill. Had there been, the ratification would have been simply of the assignment and not of the

fraud—of the result and not of the inducing cause, which is quite another thing. In such cases it may well be that the defrauded party, thus ratifying, can follow the fruits of the fraud. In ratifying the location of the warrant the complainants must ratify its assignment as one indispensable precedent proceeding in its location. In so doing they ratify the act of the guardian in receiving the price, $107, a fair price as the evidence shows.

"There can be no ratification of a part only of a transaction. The law does not allow one part of the transaction to be affirmed and the rest to be disallowed."

1 Am. Cycl. Law, p. 434.
1 Pomeroy Eq. Jur., sec. 916.

Now the warrant and its location are two different things. The warrant is personal property. It describes no lands. It is an official acknowledgment merely of a right conferred by statute to locate 160 acres of land anywhere in the surveyed public domain open to entry. When located the warrant ceases to exist as property by being surrendered in evidence that the privilege which it attests has been exercised. It has simply served the purpose of purchase money in buying so many acres of land. It has been paid or rendered and delivered to the government for that purpose.

In the meantime it has been on the market as personal property. It is assigned in blank and is sold in banks, by brokers, and passes from hand to hand. No deed signed and sealed is necessary to its transfer, as would be the case were it real estate. All the statutes, every decision of the courts speak of it as "assignable," not as "conveyable" or "grantable." The warrant being thus personal property, the ratification of its assignments is the ratification of the transfer of personal property. And equity will not, in its discretion, under the circumstances of this case, follow it into the real estate. This is clearly held in Dixon v. Caldwell, 15 Ohio St., 412, cited supra. This case decides that the remedy of the plaintiff in such case is for the value of the warrant in an action for its conversion, and that the patentee is not in equity a trustee as to the land.

Mr. Justice Brown observes in Felix v. Patrick, supra, after declaring that the transaction in which Felix parted with her warrant was wholly void and "a fraud upon her" (of which there is no allegation, proof or even pretext in the case at bar), that, as to Patrick, who was not charged in the bill with being a party to the means employed to obtain it, and his grantees, "as the case stands at present justice requires only what the law in the absence of the statutory limitation would demand, the repayment of the value of the scrip with legal interest thereon."

But even this relief cannot be granted in the case at bar, because, as we have shown, the complainants have ratified the assignment of the warrant and the receipt by the guardian of its full value.

The decree should be affirmed.

C. K. DAVIS,

FRANK B. KELLOGG,

C. A. SEVERANCE,

Solicitors and of Counsel for the Respondents.

WETZEL *v.* MINNESOTA RAILWAY TRANSFER COMPANY.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 94. Argued January 25, 1898. — Decided February 21, 1898.

The decree of the Circuit Court, affirmed by the Circuit Court of Appeals, dismissing the bill in this case on the ground of laches was correct, and that decree is affirmed.

THIS was a bill in equity filed in the United States Circuit Court for the District of Minnesota, by the widow (since remarried) and heirs at law of George W. Remsen against the Minnesota Railway Transfer Company, and over two hundred other defendants, to establish title to one hundred and sixty acres of land situate within the corporate limits of the city of St. Paul, which the complainants contended was held in trust for them by the defendants. The land was estimated to be of the value of over one million dollars.

The facts of the case are substantially as follows: George W. Remsen was a private in Company K, Third Regiment, United States Infantry, and served in the Mexican war. By virtue of his enlistment as a soldier he became entitled, under section 9 of the act of Congress of February 11, 1847, c. 8, 9 Stat. 123, to locate a quarter section of government land, subject to private entry, under the regulations and restrictions established by the Commissioner of the General Land Office. This section further provided that in case of the death of

the soldier his right under the act should descend to his widow and minor children ; and, further, that in the event of the issuance of a land warrant to the minor children of a deceased soldier "then the legally constituted guardian of such minor children shall, in conjunction with such of the children, if any, as may be of full age, upon being duly authorized by the orphans' or other court having probate jurisdiction, have power to sell and dispose of such certificate or warrant for the benefit of those interested."

Remsen died in the military service in October, 1847, and thereafter a land warrant was issued on September 30, 1848, to "Elizabeth Remsen, widow, Harriet A. Remsen, Mary Ann Remsen, John W. Remser, Elizabeth Remsen and George W. A. Remsen, children, heirs at law, of George W. Remsen, deceased." On October 6, 1848, Mrs. Remsen qualified as guardian of all the minor children of Remsen, (except Harriet A., who was then seventeen years of age,) before the orphans' court for the county of Philadelphia, Pennsylvania.

The land warrant issued to the widow and minor children of Remsen was never located by any or either of them, but was sold and assigned on October 11, 1848, to one Nathan C. D. Taylor, of St. Croix County, Territory of Minnesota, who subsequently located it upon the land in controversy and to whom a patent was issued by the Government on March 20, 1850, and from whom all the defendants in this case, directly or indirectly, claim title.

The sale and assignment of the warrant were made without an order authorizing or confirming it, so far as appears, of the orphans' court appointing Mrs. Remsen as guardian, and were consummated by Mrs. Remsen, acting in her own right and as the guardian of the minor children, with whom was joined Harriet A. Remsen.

It was contended by the complainants in the Circuit Court, as well as in the Circuit Court of Appeals, that the sale and assignment of the land warrant to Taylor were utterly void as to the interests of all the minor children of George W. Remsen, other than Harriet A., who joined in the assignment, because the sale and assignment made by the mother as guar-

dian was not authorized by any order or decree of the orphans' court of the county of Philadelphia.

The Circuit Court dismissed the bill on the ground of laches. 56 Fed. Rep. 919. Upon appeal that decree was affirmed by the Circuit Court of Appeals for the Eighth Circuit. 27 U. S. App. 594. Whereupon the complainants appealed to this court.

Mr. Ernest Howard Hunter and *Mr. John W. Hinsdale* for appellants.

Mr. Cushman K. Davis for appellees. *Mr. Frank B. Kellogg* and *Mr. C. A. Severance* were on his brief.

Mr. Justice Brown, after stating the case, delivered the opinion of the court.

The Circuit Court dismissed this bill on the ground of laches, and the Circuit Court of Appeals affirmed its action. There can be no doubt whatever of the correctness of this conclusion. Indeed, a stronger case for the application of the doctrine of laches can scarcely be imagined. The warrant, which was issued in 1848, entitled the widow and minor children of Remsen to a grant of one hundred and sixty acres of public lands. This warrant was never located by the persons to whom it was issued, who appeared to have lived in Philadelphia, and to have been in straitened circumstances.

The warrant was sold by them in 1848 to Nathan C. D. Taylor, and there is nothing to show that it did not realize for the widow and heirs its market value. Indeed, the Court of Appeals found that it was sold for its full value, and the widow testified that the proceeds were applied to the support of herself and the minor children of the deceased soldier. No fraud in the transaction was alleged or proved. Nothing appears to impeach the validity of the sale, except the fact that the widow, who had been appointed guardian of all the minor children, except the eldest, did not procure the consent of the orphans' court in Philadelphia to make the sale, as required by the

statute. This was doubtless a technical defect; but it did not show that the warrant was not actually transferred by the widow, acting for herself and her children, (except one who consented in her own behalf,) or that they did not receive full consideration for such transfer.

It is true that the locator and his grantees in possession may have been in law chargeable with the knowledge that an order of the orphans' court was never obtained; but in view of the fact that the widow and heirs of Remsen lived in Philadelphia, a thousand miles from St. Paul, it is scarcely a matter of surprise that they did not investigate this subject with that care which they probably would have exercised had that court been more accessible. Particularly is this so, when it is considered that the officers of the land department, subsequently and after a full review of the facts, decided the warrant to have been properly transferred to Taylor, and issued a patent to him.

It was not the foresight of the widow or heirs of Remsen which caused this warrant to be located upon lands so near to the thriving city of St. Paul, but that of Taylor, who appears to have been a resident of Minnesota; and this suit is a manifest attempt of the complainants to take to themselves the benefit of his action, in which they did not participate and of which they were entirely ignorant for over thirty years after the location had been made.

Conceding that the minors were not affected by laches until they became of age, it appears that the youngest of them reached his majority in 1863, at which time the lands were worth about $1500. Then, if not before, the exercise of diligence became incumbent upon them. It was their duty to have informed themselves and to have acted. It is scarcely possible that they should not have known that their father was a soldier in the Mexican war, and they were chargeable by law with knowledge of the fact that he was entitled to a land warrant. If they did not know this as a matter of fact it was because their mother and eldest sister had failed to inform them of it; and it is inequitable to charge upon the defendants the entire consequences of this ignorance.

Knowledge of the transfer seems to have finally come to them, not through any exertion of their own to inform themselves of the facts, but by an accidental meeting with a lawyer from Minnesota, who had in some way, probably by an examination of the title, become cognizant of the defect in the transfer. It was a mere matter of chance when they would be informed of the defect in the defendants' title, or whether it would ever come to their knowledge at all. To permit them now, after a lapse of forty-four years from the time the warrant was issued, and of thirty years from the time the youngest child became of age, to impeach the transaction, would be an act of the most flagrant injustice to the present holders of the property. This property, which was probably not worth more than one or two hundred dollars at the time of the location of the land warrant, is now estimated to be worth at least a million, and is covered, or partly covered, by houses and business blocks. In the forty-four years that have elapsed since the warrant was issued these lands have been platted and sold in lots to purchasers, who were probably ignorant in fact, if not in law, of any defect in the title, and relied upon the validity of the transfer from the widow and heirs of Remsen and upon the patent from the United States, which appears to have been regularly issued after an examination of all the facts attending the granting, transfer and location of the land warrant by the officers of the land department. While the fact that the complainants were ignorant of the defect in the title and were without means to prosecute an investigation into the facts may properly be considered by the court, it does not mitigate the hardship to the defendants of unsettling these titles. If the complainant may put forward these excuses for delay after thirty years, there is no reason why they may not allege the same as an excuse after a lapse of sixty. The truth is, there must be some limit of time within which these excuses shall be available, or titles might forever be insecure. The interests of public order and tranquillity demand that parties shall acquaint themselves with their rights within a reasonable time, and although this time may be extended by their actual ignorance, or want of means, it is by no means illimitable.

If any authority were needed for the action of the courts below in dismissing the bill upon the ground of laches, it would be found in *Felix* v. *Patrick*, 145 U. S. 317. In that case a half-breed woman, belonging to the Sioux nation, received in 1857 a certificate of land scrip, issued under the then existing law, which provided that no "transfer or conveyance of any of said certificates shall be valid." Notwithstanding this provision the woman sold the scrip and executed a blank power of attorney, also a quitclaim deed in blank, in which the name of the attorney, the description of the land and the name of the grantee were afterwards filled in by the grantee, who had caused the papers to be executed. The grantee thereafter located a tract of land, and subsequently Congress confirmed his title to the same. The half-breed was ignorant of all these facts until 1887. In 1888, she having died in the meantime, her representatives filed a bill in equity against the grantee, charging him with having fraudulently obtained the power of attorney and the quitclaim deed, but failing to state when and how the frauds were discovered. It was held that as the bill did not state the time when the frauds were discovered, so that the court might clearly see whether they could have been discovered before, the bill was fatally defective; and, that under the circumstances, it would be inequitable to disturb the title of the defendants, who held adversely as against the half-breed woman, and not by virtue of the power of attorney or quitclaim deed, which passed no title, or by the confirmatory act of Congress which granted no additional rights.

Upon the facts disclosed in this record, it is entirely clear that the decree of the court below was correct, and it is therefore

Affirmed.